S. HRG. 100-96

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 675

A BILL TO AUTHORIZE APPROPRIATIONS TO CARRY OUT THE ENDANGERED SPECIES ACT OF 1973 DURING FISCAL YEARS 1988, 1989, 1990, 1991, AND 1992

APRIL 7, 1987

Printed for the use of the Committee on Environment and Public Works

U.S. GOVERNMENT PRINTING OFFICE

72-965 WASHINGTON : 1987

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S321-21

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

QUENTIN N. BURDICK, North Dakota, *Chairman*

DANIEL PATRICK MOYNIHAN, New York
GEORGE J. MITCHELL, Maine
MAX BAUCUS, Montana
FRANK R. LAUTENBERG, New Jersey
JOHN B. BREAUX, Louisiana
BARBARA A. MIKULSKI, Maryland
HARRY M. REID, Nevada
BOB GRAHAM, Florida

ROBERT T. STAFFORD, Vermont
JOHN H. CHAFEE, Rhode Island
ALAN K. SIMPSON, Wyoming
STEVE SYMMS, Idaho
DAVE DURENBERGER, Minnesota
JOHN W. WARNER, Virginia
LARRY PRESSLER, South Dakota

PETER D. PROWITT, *Staff Director*
BAILEY GUARD, *Minority Staff Director*

SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION

GEORGE J. MITCHELL, Maine, *Chairman*

DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
FRANK R. LAUTENBERG, New Jersey
JOHN B. BREAUX, Louisiana
BOB GRAHAM, Florida

JOHN H. CHAFEE, Rhode Island
ROBERT T. STAFFORD, Vermont
ALAN K. SIMPSON, Wyoming
DAVE DURENBERGER, Minnesota
LARRY PRESSLER, South Dakota

CONTENTS

OPENING STATEMENTS

	Page
Chafee, Hon. John H., U.S. Senator from the State of Rhode Island	7
Graham, Hon. Bob, U.S. Senator from the State of Florida	3
Mitchell, Hon. George J., U.S. Senator from the State of Maine	1
Pressler, Hon. Larry, U.S. Senator from the State of South Dakota	9
Simpson, Hon. Alan K., U.S. Senator from the State of Wyoming	8

WITNESSES

Bean, Michael J., Wildlife Program, Environmental Defense Fund	12
Written statement	93
Buffett, Jimmy, chairman, Florida Save the Manatee Committee	30
Dunkle, Frank, Director, U.S. Fish and Wildlife Service	4
Written statement	46
Responses to additional questions	66
Evans, William E., Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Department of Commerce	5
Written statement	82
Fischer, Roland C., secretary-engineer, Colorado River Water Conservation District	35
Written statement	119
Responses to additional questions	124
Husnik, Donald F., Associate Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Department of Agriculture	9
Meyer, Christopher, National Wildlife Federation, Rocky Mountain Natural Resource Clinic, Boulder, CO	37
Written statement	146
Pitts, Tom, coordinator, Colorado Water Congress	36
Written statement	135
Robertson, Gordon, legislative counsel, International Association of Fish and Wildlife Agencies	11
Written statement	91

ADDITIONAL MATERIAL

Crowell & Moring, letter to Senator Mitchell relative to the testimony of Christopher Meyer	42
S. 675	231
Statements:	
States of:	
Montana	188
Wyoming	191
American Association of Zoological Parks and Aquariums	192
Central Nebraska Public Power and Irrigation District	194
Defenders of Wildlife	197
Natural Resources Defense Council	211
Nature Conservancy	219
Wildlife Society	228

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

TUESDAY, APRIL 7, 1987

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION,
Washington, DC.

The subcommittee met at 9:30 a.m. in room SD-406, Dirksen Senate Office Building, Hon. George J. Mitchell (chairman of the subcommittee) presiding.

Present: Senators Mitchell, Baucus, Graham, and Chafee.

OPENING STATEMENT OF HON. GEORGE J. MITCHELL, U.S. SENATOR FROM THE STATE OF MAINE

Senator MITCHELL. Good morning, ladies and gentlemen. The hearing will come to order. This morning the subcommittee turns its attention to the Nation's foremost law for the protection of living things, the Endangered Species Act.

Senators Chafee, Moynihan, Stafford, Lautenberg, Durenberger, Graham, and I have introduced legislation to provide for continued and effective implementation of the Endangered Species Act over the next 5 years. It is a strong statement that we will not waver from our commitment to protect those species of plants and animals which are on the brink of extinction.

We are here today to review how the act is working and to consider our legislation and any other proposals to change the current law.

Let me add, however, that while I believe that we should consider refinements which would improve our ability to achieve the act's goals, I find no justification for amendments which would provide less protection for threatened or endangered species than currently exists.

More than 20 years have passed since the first legislation was enacted to protect endangered and threatened species of fish, wildlife and plants. The present comprehensive Endangered Species Act became law in 1973 and was amended in 1978, 1979 and 1982.

This long and painstaking development of our Federal endangered species program demonstrates without question that the Congress and the American people want these species and their habitat preserved for future generations.

Over the last two decades we not only have developed and refined effective mechanisms to conserve threatened and endangered species and their habitat, we also have crafted measures which

allow flexible approaches to accommodate responsible economic development.

Experience with the act over the years has borne out the success of our efforts. There have been few irresolvable conflicts. Virtually all projects have been modified to protect species while allowing a project's basic purposes to be achieved.

The most recent evidence supporting this conclusion is the report by the General Accounting Office concerning the effect of the Endangered Species Act on water projects in the West, which is being released to the public today. Senator Chaffee and I asked the GAO to conduct this review in March 1985 because of continuing assertions about the act's impacts on these projects.

The GAO reviewed over 3,000 consultations on water projects between 1977 and 1985 and found that only about 2 percent actually had any effect. "Most importantly," the GAO concluded, "no water project was terminated as a result of a consultation, and cost increases caused by consultation requirements generally represented a small percentage of total project costs."

In short, the GAO answered half the question with regard to the Endangered Species Act. The act has little effect on western water projects. It does not need to be amended further to accommodate responsible economic development.

The other half of the question remains unanswered: has the act successfully protected endangered species from the effects of western water projects?

There are a number of disturbing trends in our endangered species program which are cause for concern. I will mention only briefly now and explore them further with questions for our witnesses.

First, the present level of funding for the act falls far short of what is needed to protect and recover species threatened with extinction. Funding has remained almost constant for the past 7 years, yet the number of species protected under the act has nearly doubled.

Second, present Federal/State cooperative efforts to protect and recover endangered species are inadequate and are disintegrating. The amount of money currently appropriated for matching grants to the States under section 6 of the act is roughly the same as it was in 1977, yet there are four times as many state cooperative agreements.

Third, there are far too many recovery plans for species that are not being implemented and that provide no criteria by which to judge their success.

Fourth, protection for plants under the act still lags far behind that provided for animals. Anyone can pick, dig up, cut or destroy an endangered plant with impunity unless the offense is committed on federal land.

And finally, the National Marine Fisheries Service and the Department of Agriculture appear to have been relatively inactive in fulfulling their responsibilities under the act. Only six marine species have been listed by the Fisheries Service, and the agency has approved only three recover plans. The Department of Agriculture has referred only two cases of suspected violations involving import or export of protected plants since 1981.

I look forward to the testimony of our witnesses this morning and hope they can address some of these concerns. I look forward to working with all of them to extend and reauthorize this important law for an additional five-year period.

We are pleased to be joined this morning by the distinguished Senator from Florida, the former Governor, Senator Graham. Senator, do you have an opening statement you wish to make?

OPENING STATEMENT OF HON. BOB GRAHAM, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator GRAHAM. Thank you, Mr. Chairman.

I appreciate the opportunity to hear the testimony today on the reauthorization of an act which is very important to our Nation and to my State of Florida and which is literally a matter of life and death for numerous species of animals and plants throughout the United States.

I am pleased to cosponsor S. 675 to reauthorize the Endangered Species Act. This reauthorization is a statement of our recognition of responsibility which we have to future generations to save those threatened by extinction.

In Florida, we understand the urgency of funding the research, the recovery and habitat restoration associated with endangered species. We have tracked only 26 Florida panthers this year. That means that only about 30 to 50 are left in the entire world, all of them in south Florida, all of them dependent for survival on Federal fundir of the comprehensive project to save them through the Endangered Species Act.

The American crocodile now lives in only two small areas of extreme south Florida: part of Everglades National Park and the upper Keys. There are several hundred of them, but only 20 nesting fe les hav been identified in the last few years. The beach mouse, the Everglades kite, the whooping crane, all have only a tenuous hold on their survival. The cranes have actually vanished from Florida, and the Florida Game and Freshwater Fish Commission is experimenting with plans to reintroduce the bird into the area of the Kissimmee River.

Also at risk is a warm water mammal called the manatee. The threat to the manatee is so great that the State of Florida formed a private foundation, the Save the Manatee Commission, to expand the State efforts to save it. Mr. Jimmy Buffett, who chairs the commission, is testifying today on his work to preserve the manatee and on his concerns about other endangered species in Florida.

The species we are working to save in Florida are but a few of the numerous endangered species deserving protection throughout the United States, Mr. Chairman. Failure to reauthorize and provide continued funding under the Endangered Species Act could condemn these species, some sooner, some eventually, to extinction.

Human activities have limited the ability of these species to thrive. Therefore we are obliged to do everything within our means to guarantee their survival. This is exactly what the reauthorization of S. 675 seeks to accomplish.

I look forward to hearing the testimony of our witnesses today, Mr. Chairman. Thank you.

Senator MITCHELL. Thank you very much, Senator Graham.

Welcome, gentlemen. We will begin with Mr. Frank Dunkle, the Director of the U.S. Fish and Wildlife Service. Mr. Dunkle, welcome. We look forward to your testimony and to working with you in this area.

STATEMENT OF FRANK DUNKLE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE

Mr. DUNKLE. Thank you, Mr. Chairman. My name is Frank Dunkle. I am the Director of the Fish and Wildlife Service. Mr. Chairman, I do have a statement that I would like to have entered into the record. I would like to make a few comments, and then I would stand ready to answer questions from the committee.

Senator MITCHELL. Thank you, Mr. Dunkle. As with all witnesses, your full written statement will be inserted in the record, and we appreciate your summarizing your testimony.

Mr. DUNKLE. Mr. Chairman, you did an excellent job of giving my testimony in terms of the facts and figures, so I will not carry on with those, excepting that listing, consultation and recovery are the three major portions of the act that we are working with. I will just give you a few statistics.

Since the act was put into effect, we have had 35,000 consultations and, of those, less than 1 percent of all of the projects that were reviewed were hindered in any way from going to consummation.

On the listing, we have more than 150 species listed in 1985. We are moving along much more rapidly each year and I think doing as much as we can with the personnel and with the money that has been authorized for us to use for the Endangered Species Act.

Under recovery, we have over 211 recovery plans. As you indicated, not very many of those are in operation: again, lack of funds.

On our section 6 money, or aid to the States, we have had authorized roughly $4 million. We have had requests from the States at about $8.5 million. So we are just a bit behind on that. The committees have authorized money for the section 6 during the past several years, about half of what the States have requested.

Mr. Chairman, I would say that for the Fish and Wildlife Service we would recommend that the act be reauthorized and that it be for four years with no kinds of additions or amendments at this time. Give us a chance to make it work, see how it works. Every two years there is always some problem arising that kind of sets awry.

Four years would give us the opportunity to at least see how it works and also to review the regulations that have been put in place and see if they are the proper regulations, if they are giving the kind of protection that is necessary. I think the regulatory parts need closer attention than any amendments to the law.

Mr. Chairman, that concludes my testimony. I would stand ready for questions from the committee.

Senator MITCHELL. Mr. Dunkle, thank you. You have set a commendable standard of brevity, which all of the other witnesses will have a difficult time repairing to.

We will next hear from Dr. William Evans, the Assistant Administrator for Fisheries, the National Oceanic and Atmospheric Administration.

STATEMENT OF WILLIAM E. EVANS, ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. EVANS. Thank you, Mr. Chairman, Senator Graham. I appreciate the opportunity to inform you of the activities of the Department of Commerce and NOAA under the Endangered Species Act of 1973 and to wholeheartedly support its reauthorization. This act is vital to the conservation of species that are endangered or threatened with extinction.

I have submitted a copy of my full testimony for the record and will present a summary to stay within the time constraints. I am sure that I will not be quite as brief as Mr. Dunkle, my colleague from the Fish and Wildlife Service.

In terms of listing, we have at the present time 21 species that have been listed by our agency as endangered or threatened under the act. We have received a petition to list the Chinese river dolphin and are working with scientists from the People's Republic of China to determine the population status of this species. We are also reviewing the status of all other species of river dolphins which are being threatened by water projects, dams and a number of other agricultural projects, mostly in South America and India.

We are also looking at other intracoastal species that we believe may warrant listing under the Act. The National Marine Fisheries Service also is looking closely at the status of the northern fur seal and the stellar sea lion. We have discussed the status of the Gulf of California harbor porpoise with Mexican officials, one of the 21 species that we have listed.

Of the species we currently have listed, there are eight whales, one porpoise, four seals, two fish, and six turtles. We are working with the states and looking at other species of fish and at the possibility of listing some species of marine plants.

Recovery plans provide a means to coordinate the efforts of Federal, State, local and private organizations. We are implementing recovery plans for the Hawaiian monk seal and all species of sea turtles, and we are developing national recovery plans for the humpback whale and the right whale.

I will appoint recovery teams to provide advice and assistance in implementing the plans for these whales. We are in the process of doing that now. This will be done in close cooperation with the Marine Mammal Commission, the International Whaling Commission and several environmental groups. Our scientists will be participating in an international survey of North Atlantic whale populations. Data on humpback whales as well as several other species will be collected during this program.

We are taking a number of recovery actions for the Hawaiian monk seal, including control of human activity and a head-start program which, by the way, has increased the pup survival from 10 percent to 90 percent. We also are continuing studies on population numbers and habitat use.

In the case of sea turtles, we have a head-start program and have assisted in the development of a device to help reduce the mortality of turtles associated with trawling for shrimp. Of the 15,000 shrimp boats fishing in U.S. waters, less than 400 have voluntarily started using this device which, at least based on our initial tests, can save as many as 97 percent of the turtles encountered if used properly.

At the present time we have proposed regulations to require the use of this device or increase the use of this device among shrimpers. These regulations were subjected to extensive public review and comment. Thousands of comments have been received from the fishing industry, State and local governments, as well as the environmental community. We are in the process of reviewing all these comments and will use them in reevaluating the regulations that we have proposed.

In reference to consultations, final regulations implementing amendments to section 7 were published last June, and we are working with other Federal agencies to explain these requirements and changes. A workshop to help accomplish this was held in Washington, DC last month.

In terms of future activities, we will be discussing with coastal States their interest in developing cooperative programs for listing of marine plants and invertebrates and vertebrate species. We already have a stranded-marine-mammal recovery network. The National Marine Fishers Service is developing recovery effort guidelines to focus its recovery program. We are working on this in association with the Marine Mammal Commission and also cooperating with the Fish and Wildlife Service.

We are developing a program to identify and undertake status reviews of marine species that may warrant listing under the Act. NOAA will be cooperating with international agencies such as CITES and IUCN as well as local organizations in our research and recovery efforts.

We are working with the Fish and Wildlife Service to develop regulations to implement the Marine Mammal Protection Act Endangered Species Act Amendment that provides for incidental take of small numbers of listed marine mammals.

Other than a technical amendment which would allow us to issue permits outside the 3-mile territorial limit in there 200-mile Exclusive Economic Zone, we do not believe there is a need for any major amendments to the Act. We feel it is working, and we hope to participate in addressing some of those very serious problems that you mentioned in your opening statement. We started to work on those at the beginning of this fiscal year, in October.

Thank you very much, Mr. Chairman. I am available for any questions that you or any other member of the committee may have.

Senator MITCHELL. Thank you, Dr. Evans.

Before proceeding to the next witness, I would like to recognize Senator Chafee, who served with great diligence and distinction as chairman of the subcommittee for 6 years and is responsible for much of the legislation enacted in that time to protect the American people and the American environment.

Senator Chafee, welcome. Do you have an opening statement?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman. I have an opening statement which I will place in the record, but I do want to say how splendid it is that you are holding this hearing today on the reauthorization of the Endangered Species Act. I think we are going to get a lot of good information from the witnesses on how much more we should do, whether it should be a straight reauthorization.

You certainly are giving marvelous leadership to this subcommittee, and I want to congratulate you for it.

Senator MITCHELL. Thank you, Senator Chafee. Your statement will be placed in the record along with statements from Senators Simpson and Pressler.

[The statements referred to follow:]

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Mr. Chairman, when the Endangered Species Act of 1973 first became law, it was an important significant environmental achievement. Not only did the law establish a comprehensive program for wildlife preservation in this country but it also became a model for the entire world.

The law recognizes that endangered species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to all of us, individually and collectively, and declares its purpose as providing "a means whereby the ecosystems upon which (they) depend may be conserved." This law is about saving such well known species as the majestic bald eagle, the powerful grizzly bear, and the California sea otter. It is also about saving the fragile piping plover, a shore bird found in Rhode Island, and hundreds of plants and flowers.

The history of the act includes a period in the late 1970's when there was considerable controversy—in the press, in Congress, and in the courts—over the proper balance between the need to preserve endangered species and the need to build a massive dam project. The law was amended at that time and has worked well ever since.

In 1982, we passed another series of amendments that, in many respects, strengthened the original law. With the support of environmentalists as well as development interests, we included new provisions to improve the law—to make it more flexible without weakening the underlying law.

In 1985, it was again time to consider an extension of the law. The Committee on Environment and Public Works approved a bill to extend the law through fiscal year 1988 with increased funding levels. No substantive amendments were included because of our belief that no major changes were needed in the act. Unfortunately, the Senate did not have an opportunity to consider that bill.

Today, we are considering S. 675, a bill to pick up where we left off last year. This bill does not include substantive amendments for the same reason we did not include any last year. Major changes are not needed. The act is working fairly well and, since the Government is still grappling with the changes made in 1978, 1979, and 1982, an extension of the law without major changes appears to be the best course.

If, during the hearing process, we learn of areas where amendments to strengthern the act are needed, we will surely consider them. However, any attempts to weaken the law will be vigorously opposed. Since the existing law remains in effect with or without passage of this bill, no legislation is preferable to legislation that would erode the strength of the current law.

Mr. Chairman, the Endangered Species Act is one of our most important environmental laws. The time has come for us to review it, if need be to debate it, and to pass a bill extending the authority to fund it. People care about this law and it is our job to see that it is extended.

Opening Statement of Hon. Alan K. Simpson, U.S. Senator From the State of Wyoming

The Endangered Species Act was originally created to afford additional protection to species which had suffered population declines. The original intent of the Endangered Species Act was, and still is, laudable. However, since the original passage of the Endangered Species Act, there have been several instances where the spirit of the law has been abused and efforts to effect public land use decisions which do not directly affect a given threatened or endangered species. In addition, certain judicial proceedings have resulted in the misinterpretation of the spirit of the law. These court decisions may actually cause harm to the very species they seek to protect by alienating the public that must be the source of support for endangered species recovery activities.

In my home state of Wyoming we have had both positive and negative experiences with the Endangered Species Act. For instance, the Endangered Species Act has assisted the Wyoming Game and Fish Department immeasurably in efforts to preserve the endangered black-footed ferret. The Endangered Species Act has also aided wildlife managers in protecting lesser known plant and animal species in Wyoming. However, the negative experiences we have had with the act cause us deep concern and I believe the act must be amended in order to correct the flaws which have come to light in recent years.

It is relatively easy to manage endangered plant species or small animal species. In the Rocky Mountain West we have an animal species which is particularly difficult to manage—ursus arctos horribilis—the grizzly bear. Large predators, especially man eaters, pose unique problems to wildlife managers. My personal experience with grizzly bear management has reinforced the idea that the 8th circuit court decision involved in *Sierra Club* v. *Clark* must be reversed in order that responsible wildlife managers can effectively bring about the recovery and sustainability of local grizzly populations. Unfortunately, to some, this issue has become more symbolic than real. I have often stated that much of the legistation we act upon in Congress is a result of guilt, fear, and emotion. This is especially true with regard to the "taking" (i.e. trapping and killing) of grizzly bears and wolves. Members of the subcommittee must insure that they approach endangered species issues with a full measure of reason and objectivity in order that wildlife managers can be given all of the tools that are necessary to exercise their stewardship.

In the case of *Sierra Club* v. *Clark*, the court failed to differentiate between hunting for sport and hunting for management purposes. In addition, the court ruled that before the taking of a threatened animal can occur, a determination must be made that population pressures within the animal's ecosystem cannot otherwise be relieved. The court did not recognize that hunting can be an act of conservation. Therefore, Congress must recognize that hunting may actually aid in the recovery of the grizzly bear.

There are those who are opposed to any hunting in general for various reasons. However, a dispassionate analysis of the grizzly bear situation will show that hunting can help rid a given ecosystem of "problem bears" which would otherwise come into conflict with humans, resulting in Federal agency taking the bear. Hunting can also contribute greatly to grizzly bear recovery efforts by enlarging the constituency for grizzly bear recovery activities. If local citizens are convinced that Federal regulations will never provide for hunting of grizzly bears, the result is alienation of many citizens who would otherwise support grizzly bear recovery efforts. Experience with grizzly bears on Kodiak Island in Alaska reinforces the idea that hunting, when used in conjunction with other conservation activities, can result in a significant and thriving grizzly bear population. At Kodiak Island, grizzly bears that are most likely to be killed by hunters are those that have lost their fear of human beings. The result is a culling of problem and potential problem bears. Thus, wildlife managers observe that fewer bear/human conflicts occur where there is a highly regulated hunting season. Hunting of grizzly bears cannot occur in the Lower 48 States without determining the total mortality in a population prior to issuing of yearly hunting regulations. If yearly mortality exceeds a certain level, hunting would obviously not be allowed.

Sierra Club v. *Clark* is important to consider for grizzly bear management as well as wolf management. In the Rocky Mountain West there is much discussion about the potential Federal reintroduction of wolves into the Yellowstone ecosystem. Those of us who have had experience with wildlife know that animals have no concept of artificial boundries and that it is likely that wolves will migrate outside of Yellowstone Park—and that's when the problems will begin. We must have changes to the Endangered Species Act in order to manage the wolf effectively. If changes

are not made in the act it is unlikely that the public would support wolf reintroduction efforts and in the long haul this would only be to the detriment of the wolf.

I strongly urge the committee to consider amending the Endangered Species Act this year. If changes in the law are not facilitated I predict there will be difficulties in reauthorizing the act this year. I very much look forward to working with the distinguished members of this subcommittee in that regard.

Another area which concerns me greatly involves western water rights. With regard to water allocation, the Endangered Species Act has worked well in most instances despite efforts by some to distort and stretch its intent. In the Western States we find that the most serious effects of misapplication of the act may interfere with the State's basic right to allocate water. We must insure that Federal and State agencies are given a chance to work cooperatively in order to iron out differences relating to water rights and species management. I strongly encourage continued cooperation in the manner we have seen in the Colorado and Platte River Basins. I am particularly disturbed to see downstream States "use" an endangered species to try to carry out their own hidden agenda with regard to the allocation of the water. If we are serious about protecting endangered species, we should not use them as pawns to carry out a previously flawed agenda in land use planning or water allocation.

I do sincerely appreciate the opportunity to make my views known of this important environmental issue and I thank the members for this opportunity.

OPENING STATEMENT OF HON. LARRY PRESSLER, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Mr. Chairman. thank you for holding these hearings on the Endangered Species Act. The Endangered Species Act expired in 1985, but has been continued through the appropriations process. It is important that the authorizing committee move on this issue.

The Endangered Species Act provides the framework for our efforts to protect and assist endangered species. Section six of the act is a Federal/State cooperative effort which is critical to State efforts to protect endangered species. For example, the State of South Dakota has requested $79,000 in section 6 funds to continue its efforts to protect the piping plovers, whooping cranes, black-footed ferrets and two plant species. Without these cooperative funds the States will not be able to maintain these programs.

The Endangered Species Act has been very successful in protecting various species of fish, wildlife and plants from extinction. The impact of the extinction of a fish or animal goes far beyond that particular species. Nature has established a very fine balance which must be maintained. It is also important that we try to maintain all species for future generations to enjoy. For these and many other reasons it is critical that we extend the Endangered Species Act and continue our effort in this area.

I look forward to hearing our witnesses testimony.

Senator MITCHELL. Our next witness is Dr. Donald Husnik, Associate Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Department of Agriculture. It is a good thing for you we did not start your time while I was reading your title. You would not have had much time left to testify.

Welcome, Dr. Husnik.

STATEMENT OF DONALD F. HUSNIK, ASSOCIATE DEPUTY ADMINISTRATOR, PLANT PROTECTION AND QUARANTINE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

Mr. HUSNIK. Thank you, Mr. Chairman. I do appreciate being elevated from the honorable title of Mr. to Dr., but other than that, my title is as it should be.

Mr. Chairman and members of the subcommittee, it is a pleasure to appear before you today to discuss reauthorization of the Endan-

gered Species Act. The Department of Agriculture believes that the ESA and the Convention on International Trade in Endangered Species, CITES, are vital elements in preserving the world's many endangered and threatened species of plant life.

The U.S. Government has played, and is continuing to play, a leading role in developing CITES and in encouraging countries to improve their enforcement efforts. We are proud to be a part of this effort. Members of the Convention have congratulated the department for having the most effective enforcement program for plants in the world. They have looked to the program conducted by the department's Animal and Plant Health Inspection Service for ideas on how to improve enforcement of CITES.

APHIS began enforcing CITES in 1978. Our plant protection and quarantine professionals examine shipments of endangered plant species that are imported into or offered for export from the United States to ensure that they comply with the law. Shipments that do not comply are seized.

Before seizing imported plants, however, we must establish that they have been taken from the wild, even though certified to be artifically propagated. It is often very difficult to establish that plants from foreign countries have come from the wild. We must accept as valid the documentation of the certifying country in the absence of evidence to the contrary.

During calendar year 1986, we examined over 263 million imported plants. Of these, 4.4 million in approximately 3,000 shipments were subject to regulations under the ESA. Between 9,000 and 10,000 plants were seized and placed in rescue centers because they were not in compliance with the law or the regulations. In addition, we processed approximately 3,000 shipments, totaling 2.7 million endangered species of plants for exportation. These figures have been fairly constant in the last few years.

From the beginning of our enforcement efforts, we have worked closely with the U.S. Fish and Wildlife Service in the investigation of possible violations of CITES. Interior's authority to prosecute violations extends to interstate commerce. Before APHIS can become involved, we must have evidence that the violations are related to foreign commerce. Nevertheless, through our working relationship with the Fish and Wildlife Service, we are continually cooperating informally to stop illegal importations or exportations of protected plants.

Most violations of CITES arise from ignorance of the law. In these cases, we believe that forfeiture of the plants is usually a sufficient penalty. More serious or deliberate violations are subject to civil penalty or criminal prosecution. The department's Office of Inspector General investigates violations of the act and CITES, and the Office of the General Counsel litigates administrative actions by the USDA and refers criminal cases to the Department of Justice for prosecution.

We support reauthorization of the act for 5 years. At this time we have no recommended amendments to the act.

Thank you, Mr. Chairman.

Senator MITCHELL. Thank you very much.

Before hearing from the next witness, I would like to acknowledge the presence of Senator Baucus, a valuable contributing

member of this committee for several years. Senator, do you have a statement you wish to make?

Senator BAUCUS. I have no statement. Thank you.

Senator MITCHELL. Thank you.

We will hear next from Mr. Gordon Robertson, Legislative Counsel, International Association of Fish and Widlife Agencies. Mr. Robertson, welcome.

STATEMENT OF GORDON ROBERTSON, LEGISLATIVE COUNSEL, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES

Mr. ROBERTSON. Thank you, Mr. Chairman, and thank you for the invitation to present the association's views on the reauthorization of the Endangered Species Act. I am accompanied today by our legal counsel, Mr. Paul Linzini.

The association presents its views not merely from interest but in representation of the State fish and wildfile agencies which are charged with the responsibility for fish and wildlife and the implementation of the act at the State level. I will summarize our written comments for the record.

The association has been a supporter of the act since its passage in 1973 and has also spoken for needed revision of the act, such as the establishment of experimental populations in 1982. We are pleased to see higher funding levels in S. 675 for both the Federal program and State grants through section 6 of the act.

The association recommends, however, a 3-year reauthorization period with funding of State grants at the $12 million level in fiscal year 1988, $13 million in fiscal year 1989, and $14 million in fiscal year 1990.

Mr. Chairman, section 6 grants are critical to State program needs. During the last 10 years, over $36.7 million have been allocated through section 6 grants to our State members. The 1-year the grants were eliminated, fiscal year 1982, only 50 percent of the participating States were able to remain in the program. Those did so on carryover funds after a considerable effort to retain those funds.

Because of problems from two decisions of the Eighth Circuit Court of Appeals, the association is recommending that the subcommittee amend the act to better protect fish and wildlife resources. The association's staff is prepared to work with subcommittees and staff on language addressing the two decisions.

The first is the Eighth Circuit decision of January 1985. The effect of this decision, at least in the Eighth Circuit, is that general Indian hunting rights take precedence over taking prohibitions of the Federal Endangered Species Act. Although the Department of Interior appealed the case to the U.S. Supreme Court, that court's opinion was made on the Bald Eagle Protection Act, thus letting the Eighth Circuit decision stand on the Endangered Species Act.

This decision could have disastrous results if the remaining population of a species is small, occurs on Indian lands and is not covered by the Bald Eagle Act.

Mr. Chairman, I would like to submit for the record our U.S. Supreme Court brief that outlines the number of States and species involved in this problem.

Senator MITCHELL. That will be included in the record.[1]

Mr. ROBERTSON. Thank you, sir.

In February of 1985, the same circuit ruled against taking of wolves in specified areas of Minnesota, a program recommended by the Eastern Timber Wolf Recovery Team. That decision sharply restricts the discretionary authority of the Secretary of the Interior and that of the States for protecting threatened species.

The decision is contrary to congressional intent for the Secretary's latitude in these matters and has effectively left management of wolves to the public.

Mr. Chairman, I would also like to submit for the record our court brief for the *Sierra* v. *Clark* case. This outlines the number of States that do take threatened species and the very logical and practical reasons for doing so.

Senator MITCHELL. That will also be included in the record.[1]

Mr. ROBERTSON. Thank you.

Finally, we wish to submit for the record short statements from the fish and wildlife agencies of Montana and Wyoming. From these, the subcommittee can sense not only the sincere desire to protect threatened endangered species but the real frustration that these court rulings have given these agencies. (See p. 188.)

Thank you, and we will be glad to answer any questions that you may have.

Senator MITCHELL. The final witness on this panel is Mr. Michael Bean, Chairman, Wildlife Program, the Environmental Defense Fund. Mr. Bean, welcome. We look forward to your testimony.

STATEMENT OF MICHAEL J. BEAN, CHAIRMAN, WILDLIFE PROGRAM, ENVIRONMENTAL DEFENSE FUND

Mr. BEAN. Thank you very much, Mr. Chairman. It is a pleasure to be here. Let me begin by echoing Mr. Robertson's emphasis upon section 6 funding.

Section 6 of the act is the provision that was designed to encourage states to develop complementary endangered species programs. The inducement for doing that was the promise of federal financial assistance in the amount of two-thirds of the cost of implementing those programs.

The amount of funding that is currently available to support the section 6 program is woefully inadequate, and that can be demonstrated by reference to the states that you individuals represent.

Mr. Chairman, your own State of Maine over the last decade has participated in this program and has received on average less than $30,000 a year.

Senator Chafee's State of Rhode Island in the last 5 years has received a total of less than $15,000, which is about two-thirds of the amount it received in 1981 alone.

The State of Florida, where Senator Graham hails from, currently receives two-thirds the level it received in 1980 and 1981. That is

[1] The material referred to has been retained in committee files.

enough to support work for only 8 of the State's more than 40 endangered species. In your introductory statement, Senator, you identified the many critically endangered species your State has. Only 8 of the more than 40 benefit because of the very low levels of section 6 support that are currently authorized.

Mr. Dunkle, in his statement a moment ago, indicated that the current level of requests from the States for support under section 6—about $8.5 million—is more than double the amount of money the Federal Government is able to give under current appropriations. That underestimates the real magnitude of what could usefully be spent, because many States accustomed to the low levels of support that have characterized the section 6 program for the last 5 years, have frankly cut back their requests, realizing there is no point in asking for their true needs because the amounts available do not come close to their true needs.

So the $8.5 million is a scaled-back request. If there were, in fact, money available, I am quite confident that the total requested by the States would be well in excess of that. That is why I think the increased authorization level in your bill is appropriate, though perhaps still too low, for section 6.

In addition to the matter of authorization levels, there are a couple of fairly minor, specific, focused amendments that are desirable. As you know, a growing proportion of the species that are now listed under the act are plants. The act draws a distinction in the protection it affords to species based upon whether they are plants or animals.

For animals, anyone who takes them—that is, anyone who collects them or kills them or in any way harms them—commits a violation of the act. For plants, that is not the case. The only protection against collectors and others who might vandalize, destroy, or take endangered plants extends only to plants that occur on Federal lands. There is no protection against the taking of plants that occur anywhere else, either on private lands or state lands.

If one needs evidence of the need for expanded protection against taking plants, one only has to point to the fact that of the last 54 plant species that the Fish and Wildlife Service has listed as endangered, it has chosen not to designate critical habitat for any. The reason the Service has given for not designating critical habitat is because to do so would expose those plants to the threat of taking by unscrupulous collectors, and the act does not provide any protection against that.

So it is quite clear that some expanded form of protection against taking of plants is necessary.

We have recommended a very modest narrow amendment to solve that problem. Our amendment would make it an offense under this act to remove a plant from nonfederal land, to take it, to cut it, to uproot it, to destroy it, where doing so is contrary to State law or where doing so is done in the course of a trespass.

In that way we would not, in fact, create any legal duty that does not already exist. What we would do is provide the penalties under the federal act and enforcement resources of the Federal Government against those violations.

There is one other even more narrow and more focused amendment we have recommended with respect to plants. Currently the

act gives the enforcement authority over importation and exportation of plants exclusively to APHIS in the Agriculture Department.

We believe that that authority should be concurrent with the Fish and Wildlife Service. The Fish and Wildlife Service has enforcement authority over import and export of animals. It has enforcement authority over interstate commerce in plants and animals. We think the job that APHIS has done in exercising its authority is inadequate, and we think the way to remedy that is to give the Fish and Wildlife Service concurrent authority.

Finally, the one other amendment that we have recommended has to do with monitoring of candidate species. As Mr. Dunkle explained in his view, the Fish and Wildlife Service is doing the best job it can of listing new species, given the limited resources that it has.

But the limitation on those resources has meant that roughly 10 years' worth or more of species are already identified for listing that cannot be listed because of inadequate resources. While those species remain unlisted, they are unprotected. Many of them, as we have documented before for this committee, have declined. A few have even gone extinct while they remain candidates for listing.

We think you should add to the act a very modest provision that requires the service to monitor the status of those candidate species while they remain candidates so that we do not lose them while they are candidates and so that we do not lose the options for conserving them while they are candidates.

That is a summary of my testimony. I am happy to answer your questions.

Senator MITCHELL. Thank you very much, Mr. Bean.

We will now proceed to questioning. Under committee practice, the order of questioning by Senators will be in the order that they appeared at the hearing. We will limit it to 5 minutes, and we will continue with as many rounds of questioning as is necessary to complete it.

Mr. Dunkle, I would like to begin by asking you about the level of funding proposed by the Administration. In your statement you made several statements regarding the level of activity. Page 4: over 150 species have been added to the endangered and threatened list. Page 4: over 3,000 U.S. species remain candidates for listing under the act. Page 5: 167 new recovery plans have been approved since 1982. Page 10: there were over six times more informal consultations in 1986 than occurred in 1979, and the number of formal consultations began to increase in 1984.

Yet the administration's draft legislation would authorize 15 percent less funding for the Federal agencies' endangered species programs than Congress authorized in 1982 and would return these programs to the level of funding authorized in fiscal year 1979.

How do you reconcile these statements in your testimony concerning the services' increasing responsibilities with the administration's request to reduce funding to return it to the level of 1979?

Mr. DUNKLE. Mr. Chairman, we are at a reduced level, I do agree, because of deficit and other expenditures. We have asked for the kind of funding that we can continue to move ahead with.

We have documented that we are now taking care of more species each year than we were in the past. I could indicate to you

that it takes between $60,000 and $100,000, $60,000 if you just take the absolute cost of listing, $100,000 if you bring in some of the side requirements for associated costs.

I guess that if we had all the money that could be made available to us or have our druthers, so to speak, we could look at all the candidate species, multiply that by somewhere between $60,000 and $100,000, and that would be our request for each given year or at least until we overcame the hump of necessary listings.

I can only tell you that all the money that we would want is not available. We have asked for what we think is within keeping of facing up to the deficit problem. If in your wisdom you think we should have more, we will list and we will work on recovery and the protection and consultations to the limit that you see fit to provide us.

Senator MITCHELL. Let me ask you a similar question regarding the section 6 State grant program. As you know, the conference report to the 1973 act, when this law was first enacted, said, and I now quote from that conference report:

> The grant program authorized by this legislation is essential to an adequate program. The conferees wish to make it clear that the grant authority must be exercised if the high purposes of this legislation are to be met.

Congress reaffirmed this commitment as recently as 1982, when it increased the Federal share under the grant program. The number of cooperative agreements between the service and the States has grown from 49 in 1982 to 76 this year. Yet the administration's draft legislation would not authorize continued funding of the State grant program.

In your statement today, page 7, you state, and I quote you:

> . . . the complex and often difficult task of recovering endangered species is one that is too large for any single agency. A coordinated recovery program involving Federal, State and local interests is usually necessary.

My question is: how can you talk about the importance of coordination with the States while at the same time asking Congress not to renew the authorization for section 6, the State grant program?

Mr. DUNKLE. Mr. Chairman, thank you for opening that area up to me. You may or may not recall that during my confirmation hearings one of the statements I made was that I would seek funding for section 6, and I would seek it at any level I could get it. And I have done so. However, others saw fit to reduce that from the request. So I cannot argue with you.

I can only say that coming from a State organization, I agree that section 6 money or any of the Federal funds that are made available to the States under a matching clause are really what causes some of this to be done.

Senator MITCHELL. By others, do you mean the Office of Management and Budget?

Mr. DUNKLE. Sir, you said it; I did not.

Senator MITCHELL. What we have come to learn here, Mr. Dunkle, is that we do not have a Federal Government of which the Office of Management and Budget is a part; we have an Office of Management and Budget of which the rest of the Federal Government is a part.

My time is up. I will come back to this later. Thank you very much. Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman.

I would also like to ask a question of Mr. Dunkle. Mr. Dunkle, one of the provisions in the Endangered Species Act requires that Federal agencies, prior to expending funds, consult with your agency relative to the possible jeopardy that that expenditure of funds might have on an endangered species or the habitat of an endangered species. I think that is a summary of the provision of section 7.

Could you give us your evaluation of how effectively that consultation process is operating?

Mr. DUNKLE. Mr. Chairman, Senator, I think the consultation process has been excellent in its working opportunities for both the protection of the several species that become involved as well as allowing other uses of the natural resources. I think through the section 7 consultation process we have been able to in many instances find no jeopardy.

But it was through the consultation process we were able to review all of the requirements needs of the species, also what the view of or the development recommendations were or that they would detract.

Under a number of instances also, where there was jeopardy, we were able to find conservation measures that could be carried out by the development group that would protect the species and still allow the use of the area but give protection to the endangered species or the species in question.

In a very small number across the United States has it ever been the case that the Fish and Wildlife Service has had to say: cease and desist; you cannot go any further because it will, in fact, cause a problem for a particular species. And in those instances, we have said that.

Senator GRAHAM. Are you familiar with the issue of the Florida panther habitat as affected by Interstate 75 from Naples to Fort Lauderdale?

Mr. DUNKLE. Yes, sir. I was on that highway and flew over it within the last two weeks.

Senator GRAHAM. Would you say that the process of consultation between the U.S. Highway Administration and your agency in that case was consistent with the way in which the act has worked in other areas of Federal public works projects?

Mr. DUNKLE. I think the panther has been given protection and recognition. I think the major problem was not the highway, Senator; it was the need for habitat to be protected and developed on both sides of that interstate that goes through there.

Senator GRAHAM. You are familiar with the fact that the State of Florida was required, because the Federal Highway Administration refused to do so, to finance the habitat improvement projects associated with I-75 which your agency and the State Game and Freshwater Fish Commission found to be necessary and which you, in fact, made a determination that there was a jeopardy of the species which the Federal Highway Administration effectively rejected.

Mr. DUNKLE. Yes, sir, and we can only recommend. If the other Federal agency says we are going ahead, we have made our recommendation and they can do so. For the most part, they do not do that.

Senator GRAHAM. Are there any recommendations for modifications of section 7 that you would recommend that might avoid circumstances such as we experienced in that instance?

Mr. DUNKLE. I guess in keeping with my earlier testimony, I am still recommending reauthorization without amendments so we can see how it works. I think that it then becomes a problem that if we do recommend, if we are in full agreement there is jeopardy, another Federal agency sees fit to not recognize that jeopardy, I think that it is then up to the Congress of this United States to make certain requirements necessary for other Federal agencies. It does not necessarily have to be in the Endangered Species Act.

Senator GRAHAM. The issue before us is the reauthorization of the Endangered Species Act. I am familiar with this one instance. I do not know whether that is a singular aberrant from a pattern of good relationship or whether it is reflective of a pattern of obstinance by the Federal Highway Administration or other agencies.

In this case, you had the State anxious to cooperate, the State prepared to put up a substantial amount of money, and the federal agency first refusing to even allow the State to use its own money and finally allowing the State to spend $10 million or $15 million of its money on a Federal project to protect a federally designated endangered species habitat.

I would like to ask for your analysis of that particular case study. And if, from that analysis, you do have any recommendations for modifications in this act or any other act, I would appreciate the benefit of your recommendations.

Mr. DUNKLE. Senator, you catch me on detail. I would ask your understanding that I would be most happy to give you a written answer to that question in terms of what I see as other opportunities.

Senator GRAHAM. Mr. Chairman, if it would be agreeable, I would like to submit some additional questions and requests for comment from Mr. Dunkle relative to this issue.

Senator MITCHELL. The record will be open to any Senator who wishes to submit written questions to any witness today.

Thank you very much, Senator Graham.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Dunkle, on page 10 of your testimony, you say in the bottom paragraph, "it is the Service's goal to both protect the listed species and their habitats and to find a way for the project to proceed."

Mr. Dunkle, I do not really think that is the service's goal. I do not think your goal should be to find a way for the project to proceed. The name of your agency is the Fish and Wildlife Agency; it is not the Dam Construction Agency. I find that somewhat disturbing.

Then later on, you get into the Stacy Dam situation. You seem to feel that there is a threat of passage of legislation so that you worked out a system, which I subsequently will ask Mr. Bean to comment upon, and Defenders of Wildlife have a comment on the

Stacy Dam situation which does not give it quite the high marks you give it.

My question here is: how do you explain that statement, "it is the service's goal to both protect the species and to find a way for the project to proceed"? Why is it your duty to find a way for the project to proceed?

Mr. DUNKLE. I think both are proper uses of the resource, as suggested by the laws of this country. If we can protect the species and still make arrangements for the other uses of natural resources, then I see that as a part of our charge.

If we were just to approach section 7 consultation with the idea that, well, we are going to say this is what the species needs and we are going to make no allowances for any other use, you could lock up a good share of the United States to any other use. I do not feel that Congress had that in mind when they passed the act. The act was passed to protect species but not to stop everything from happening.

We are trying to find a middle ground that is compatible with all uses but always falling to the side or leaning to the side of protecting the species first and if we can accommodate the other uses, we surely should try.

Senator CHAFEE. I certainly am pleased to hear you say that the protection of the species comes first, because that is the purpose of your agency. There are plenty out there pressing for the construction of the dams. You do not need to worry about that interest being adequately represented.

Now, Mr. Bean, let's hear from you on this subject.

Mr. BEAN. I think you are right, Senator, that the act is quite clear.

Senator CHAFEE. I am particularly interested in the Stacy Dam.

Mr. BEAN. Yes, sir. The act is quite clear that endangered species come first. It is the responsibility of the Fish and Wildlife Service to ensure that Federal actions do not result in jeopardy to the survival of an endangered species.

Mr. Dunkle is correct that where that goal is compatible with allowing development to go forward, we can have the best of both worlds: protection of endangered species and development. What I fear, frankly—and Stacy Dam is a good example—is that Mr. Dunkle in fact is not leaning in the direction he thinks he is leaning.

I regard the solution in Stacy Dam as a roll of the dice. The Fish and Wildlife Service has bet the future of the Concho water snake upon some untested, untried, experimental and widely criticized techniques that may or may not spare that species from jeopardy. Whether it will or will not work will not be known for many years, by which time the dam will have been completed and the construction will have occurred.

If the experimental devices of building artificial riffles in the water and various other measures that are proposed by the Fish and Wildlife Service do not work, what then? What then is that we will have lost the species, for all practical purposes.

I think the service in that case has clearly leaned too far to find some solution, because the solution they have embraced is one for which they can have very little certainty of success, whereas there

were other solutions that, although slightly more costly to the developer, would have provided substantially more certainty for the survival of the snake.

The Service did not embrace the solutions that would have provided more certainty for the snake, because the developer did not like those. They were more expensive. So it chose instead a solution that for the snake was really a roll of the dice. I do not think we want the Fish and Wildlife Service rolling the dice for the species it is supposed to protect.

Senator CHAFEE. Mr. Chairman, we will have another chance at this. Thank you.

Senator MITCHELL. Thank you, Senator Chafee.

Senator Baucus?

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Dunkle, as a Montanan and former director of the State Fish and Game in Montana, you know how well a role the Endangered Species Act has played in the recovery of the grizzly bear in Montana, particularly in the northern Rockies' ecosystem, the Bob Marshall Wilderness and Glacier Park.

I am wondering if you could tell us how far along that recovery program is; that is, when do you think that the bear in that part of the country might be delisted. You gave a speech, I think, last summer. You thought perhaps in 5 years it would be possible that the bear would be delisted.

I would like to know what you see the status of the recovery of the bear is, as the Fish and Wildlife Service sees it, and second, the role that the State grant and the cooperative program, section 6, the work of the State has played in this.

We thank you in Montana for having directed about $75,000 of section 6 funds to help with the bear program in the State. Montana spends between $100,000 and $200,000 a year on the bear and the Endangered Species Act.

So if you could tell us the status of the recovery of the bear, the role that section 6 has played, and third, what role Fish and Wildlife Service will play in the event the grizzly is delisted. That is, what role will the Fish and Wildlife Service play in the management of the grizzly bear in the event that the grizzly is delisted?

Mr. DUNKLE. Mr. Chairman, Senator Baucus, let's talk about the three areas of the grizzly bear: the Cabinets, the Overthrust and then the Yellowstone ecosystem.

The northern area, which would be the Cabinets, is a lot of speculation. I would not say that those bear are or are not in a recoverable situation. So we are taking a close look at those as is the state, and it is kind of a flip of the coin as to whether they are up or down or who moved through.

When it comes to the Yellowstone ecosystem, we have begun to see some real changes, some real steps forward, in that bear population in the Yellowstone, far better than any of us expected. Using our best judgment, we did not expect those bear to be coming back like they are. I am not saying they are recovered yet; I am saying they are showing an increase, they are showing a healthier look populationwise.

On the Overthrust, or that eastern front, we are seeing real bear production, real bear movement. So the State Fish and Game came

to us and officially said, we think this population should be considered for delisting. And under the Endangered Species Act, that is a legitimate question to be asked of us, just like asking for something to be listed. Delisting is just the reverse of a listing process.

So we have a letter of request from the State. That means that we will sit down with them, review all of the data that they think they have and we have and what does it mean, is it something that we can look forward to as being the kind of precise information we need to begin delisting.

If in fact there are some holes in that data and the State and ourselves agree, or at this point if we disagree, say that there is not enough data, then we say, what do we need, where are the holes and how do we fill them.

That is where we are right now on the delisting consideration for the grizzly bear in that Overthrust, or the eastern front.

Senator BAUCUS. What is your best guess as to how soon that will be in the Overthrust?

Mr. DUNKLE. The first part of the year is taken just looking at data. It is going to be a minimum of 3 years, Senator, before anybody is going to say, yes, let's do something here.

Senator BAUCUS. The second question is: what role has the State played, along with the Federal Government, in working to regain recovery?

Mr. DUNKLE. On the grizzly bear, I would say that the State is a major partner, not just a partner. You have got the Park Service, the Fish and Wildlife Service and the State deeply involved in the grizzly bear. The latecomers to it, all due respect, have been the Forest Service. But the point is that the State plays a major part in all of the studies that are being done, all of the investigations, all of the management programs. They are a major partner.

Senator BAUCUS. Would you give us the flavor, too, of the importance of the Fish and Wildlife Service in the recovery of the bear? What I am really getting at is the importance of section 6, the cooperation.

Mr. DUNKLE. Yes. Section 6 money is available to the State. As you recall, there was a bit of a problem. That was straightened out. They are receiving section 6 money and are doing their part in terms of data gathering.

Senator BAUCUS. Section 6 has played an important role in the recovery of the bear in Montana.

Mr. DUNKLE. Indeed, sir, yes. In fact, section 6 plays a major role in all States on recovery programs.

Senator BAUCUS. What would happen if the bear is delisted? What role would the Fish and Wildlife Service play in bear management? What role would other agencies, including the Park Service, play in, say, Glacier Park, recognizing that conflicts are still going to be there?

Mr. DUNKLE. The major role that we would play would be to watch carefully to see that that bear does not become trouble. Before we would even consider the delisting, we would have to have a well-agreed-upon recovery plan by the State, because if it becomes delisted, they would have to assure us that their recovery plan would keep it protected and have to understand that if there

should be any problem with an emergency listing, that bear can be right back on the protected list.

Senator BAUCUS. I ask the question because I am concerned for the safety of the Senator from Florida. He just 10 minutes ago showed me a brochure of Glacier Park. He is thinking about hiking in Glacier, and I want to make sure he is well protected.

Mr. DUNKLE. Just be sure, Senator, when you go that your friends do not rub you with bacon grease, and you will be okay.

Senator BAUCUS. Thank you.

Senator MITCHELL. Thank you, Senator Baucus.

Mr. Dunkle, I want to ask you about protection of plants, and I want to State a few facts to establish a basis for the question. So please bear with me, and if I misstate any facts I hope you will correct me in your response.

It is my understanding that about a third of the U.S. species listed under the act are plants and a majority of the candidates for future listing also are plants. Currently, anyone who captures, kills, or harms a listed animal commits a violation of the act for which substantial criminal and civil penalties may be imposed. But anyone can pick up, dig up, or destroy a listed plant with impunity unless the offense is committed on Federal land. And even there, there is no violation unless the plant is removed from the area of Federal jurisdiction.

Of the 54 plants listed since 1958, 44 of them occur in whole or in part on non-Federal land. Since 1978, the act has required that critical habitat be designated for all newly listed species unless it is imprudent to do so.

Yet since you have been director, critical habitat has been designated for none of the 26 plants that have been listed in that time. And in nearly every instance, the reason you gave for not designating critical habitat was that doing so might expose the species to taking by unscrupulous collectors.

Despite not having designated critical habitat, your agency makes information available about the location of these species when it is requested to do so under the Freedom of Information Act.

My question is: if you are convinced that unscrupulous collecting of these plants on non-Federal lands is likely to be so detrimental to them that you should not designate critical habitat, yet you hand out information on their location to anyone who makes a request under the Freedom of Information Act, how can you now maintain that the act does not need to be amended to prohibit taking on non-Federal lands?

Mr. DUNKLE. Mr. Chairman, I guess I would continue to suggest no amendments. I feel very strongly that designation calls attention to areas. The numbers of Freedom of Information requests that we get are pretty small. I do not know the exact numbers. I will provide that for you, the statistics of how many kinds of requests we get.

It is my opinion and my recommendation that we do not call attention to these plants through a critical designation of habitat but keep them kind of under cover, if you will. That is my reasoning for it, sir.

Senator MITCHELL. But if you agree that there is a problem regarding those designated plants, why do you object to amending the law to provide a penalty under those circumstances?

Mr. DUNKLE. Mr. Chairman, I do not object. I am just recommending no amendment. If you see fit or others see fit to convince you to amend for that reason, then that is fine.

I am trying to suggest that when one group comes in with an amendment, somebody wants another one. My approach is to let us approach the act, let it run for 4 years, let us see how it works. If we are having some of those problems, then I would understand that we should look into what the problem is, how big it is, and can we protect it through regulation. I think we can.

I believe that we need to look at our regulatory opportunities more than just amending the law.

Senator MITCHELL. What you are saying, really, is that if we open it up for one, others come in. Let us make the, perhaps unwarranted and dangerous, assumption that the Congress can discern between good amendments and bad.

So let's deal with just this one, on the merits of this amendment, independent of the argument that it will induce other amendments. If you, as clearly you do, have a concern about the adverse effect on these designated plants, which you have given as the reason for not designating critical habitat, would you not agree then that an amendment to provide some protection is warranted?

Mr. DUNKLE. Mr. Chairman, may I clear up that I do not have any dissatisfaction with your ability to discern right from wrong.

Senator MITCHELL. I know that. And I said: perhaps unwarranted. That was me saying that, not you, because we do not always exercise great discipline here, Mr. Dunkle.

Mr. DUNKLE. At any rate, Mr. Chairman, with the possibility of your thinking that I am a broken record, I just feel very strongly that we can give protection to those plants, especially plants, which is what we are talking about, through our regulatory function. I would like to explore that.

Rather than look at the amendment process—I think that once the whole thing is opened up to amendments, regardless, we are going to have more and more amendments—I would like to see the act work for a given amount of time, because at the end of each 2 years there is some kind of political argument and then we spend some time, like we are, with an unauthorized act.

I think that the way to go is and my recommendation to the Congress, at least, is that we proceed with a longer term of authorization and no amendments and that we as a service should look into regulatory methods of giving protection, if in fact it is deemed necessary.

I think that the perhaps the information I can pull together to show you would indicate it is not as big a problem as some would consider. And I will give you a recommendation as to how we may attack the problem through regulation.

Senator MITCHELL. Thank you. We will look forward to that, Mr. Dunkle. That will have an influence on my thinking, I know, and perhaps on others. So I hope you will get that to us as soon as possible.

Mr. DUNKLE. Mr. Chairman, it would influence mine, also.

Senator MITCHELL. My time is up.

Senator Graham?

Senator GRAHAM. Thank you, Mr. Chairman.

I have one last question, and this may be in the nature of a request for followup analysis. With the Clean Water Act, there was a decision made that at a point certain in the 1990s the Federal Government was going to be terminating its commitment to sewage plant construction financing. The bill was structured to allow for a graceful, studied exit of the Federal Government from that financing.

There has been a recommendation from the administration that there be a termination of funding under this program.

Do you have any suggestions as to what should be done in a transition period with the States, either in contemplation of no Federal participation in endangered species activity through section 6, a current level which is below what we were spending 15 years ago, or some other level?

What is the State/Federal interaction under section 6 that would be contemplated in the context of no or diminishing Federal financial involvement?

Mr. DUNKLE. Mr. Chairman, Senator, I presume you are pointing that question to me?

Senator GRAHAM. Yes.

Mr. DUNKLE. The section 6 monies are not given to the States for sewage disposal. I think you are only using that as an example.

Senator GRAHAM. I was using that as an example of where a federal decision to terminate a previously significant program was accompanied by a recognition that there needed to be a transition period. It was not an immediate cold-turkey operation.

Assuming that the administration's recommendation is for termination of this program, would you recommend what might be a transition process, what we should be doing with the States to prepare them to assume full financial responsibility for activities which are today shared?

Mr. DUNKLE. Mr. Chairman, Senator, I sit in the interesting position of having said I favor section 6 grants. I would not find myself in a likely position to suggest ways to wean the States from section 6 money. I would only hope that in your wisdom and understanding that you would not allow the section 6 grants to disappear. So I would hope that there would not be a weaning process.

Senator MITCHELL. Thank you, Senator.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Dunkle, on page 17 of your testimony, you discuss some of the fines and sentences imposed under the Lacey Act. First of all, I want to commend your agency for their activities under the Lacey Act, the vigilance that you have shown. I think the Chairman will remember that it was this committee, actually in this subcommittee, that we got started on Lacey Act review, and I think it was about 1981 we changed the penalties, making them all felonies from misdemeanors.

However, I recognize that the U.S. Attorney does the prosecuting under these cases, not you, but your folks are in close consultation with them. I think both the fines and the lack of jail sentences are

discouraging. We are not dealing with any neophytes under the Lacey Act violations, as you well know.

These people that do this importation are sophisticated, and they know exactly what they are doing. They are not just the innocent person that brings in some broadbilled parrots, thinking that it is perfectly all right. Just look at some of the offenses. Listen to this one, from the bottom of page 18: a total of 4,570 Geoffrey cat skins was seized in New York as part of an international investigation, et cetera.

My question is: why were these sentences so low? There are certainly hundreds of thousands of dollars involved in this. Six people involved in cactus smuggling paid a total fine of $12,000, that is $2,000 apiece. You recount these as some of the most valued by hobbyists. Traded internationally, the plants are considered among the ten most endangered in the world.

Can you explain what I consider to be the lightness of these sentences?

Mr. DUNKLE. Mr. Chairman, Senator Chafee, I am sure you are aware of the heartbreak that goes into a law enforcement program. When you have met all of the tight rules that are set forth by the courts, you have all of the evidence, you have not violated anybody's rights, and you lay out a well-founded case and the attorneys take it to the courts for you and you find yourself with a hand slap for a million dollar operation.

I am sure you would not be startled at the width and breadth of some of the cases that we are involved in and the amounts of money that are involved. By the way, most of the cases that we terminate are also involved heavily with cocaine and marijuana along with the others. These are not a couple of guys going out and jacklighting a deer some evening for sport; these are people who are into big money, both in fish and endangered species in regular hunting.

As I say, the heartbreak is to do a well-founded, well-documented case and end up with a $500 to $1,000 fine, and you have put hundreds of thousands of dollars into the case. I can only tell you that those are the decisions of the courts.

Senator CHAFEE. I recognize that. But you have an interplay, obviously, with the U.S. Attorney. Are your folks pressing for some severe penalties?

Mr. DUNKLE. Yes, sir, we do. In the peregrine falcon we asked for some fairly severe penalties, and they were not—we did have some prison terms, which I think probably are more effective than some of the fines.

But we have recommended to the fullest extent to our attorneys. We can only take what we get. But we will not cease or desist. We will continue our operations.

Senator CHAFEE. Just out of curiosity, and I know this is generalization, are most of these jury trial cases? Do the defendants choose a jury trial?

Mr. DUNKLE. I would not say most of them, but a good many of them are. But it does not seem to make much difference. However, if you are conficted of a game violation, I know on a State basis, ask for a jury and your peers are saying: there but for the grace of God goes me; not guilty.

So our better terms for the wildlife resource are with a judgment rather than a jury.

Senator CHAFEE. I would just like to hearken back now to your overall approach to this situation, to your duties as protecting the listed species. On page 11, you talk about worrying about the Tellico Dam repeat.

Let me say that yes, you are right, in the Stacy Dam situation, legislation was introduced. But as you well know, there is a large gap between legislation being introduced around this place and going anywhere. That particular legislation was not going anywhere.

So I think the Tellico Dam was a very unfortunate episode. As you recall, that was a little bit different than the typical situation. The Tellico Dam had been built, or three-quarters built, by the time we got into the endangered species problems with it.

So I would hope you would not be inhibited in your actions by the fact that legislation has been introduced into the Congress. I think this committee is pretty vigilant on upholding the Endangered Species Act. I can only speak for the Senate, not knowing about the House, but the Senate as a whole—and even with the Tellico Dam—I do not remember the vote in the Tellico Dam situation, but that was no pushover. The Majority Leader at the time was pressing for it. Maybe somebody with total recall around here remembers the vote. What was the vote on that? Does anybody know? In any event, I know that they had a powerful person in favor of it, and that was the Senator from Tennessee.

So my message to you is: press forward with your duties. You are the Fish and Wildlife Service, not the Dam Construction Service. And do not be inhibited by the fact that somebody has introduced legislation to override your views or go ahead with the project, regardless of what you say.

Thank you, Mr. Chairman.

Senator MITCHELL. Thank you very much, Senator Chafee.

Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Dunkle, what can you tell us about wolf recovery, say in Yellowstone? What is the Fish and Wildlife Service plan, and what are you doing in the State of Montana and the State of Wyoming?

Mr. DUNKLE. Mr. Chairman, Senator Baucus, as you recall, early on I made an agreement with the delegations from the three States, Idaho, Montana and Wyoming, that as the region completed their findings, all of the public hearings, and had a recommended recovery plan, I would discuss that with the delegation from each of the States, either individually or collectively, so they could see how the recovery plan was headed, what kind of safeguards were in it, what kind of requirements were in it.

We shall still do that. You should be hearing from us in the next couple of weeks, specifically yourself.

Senator BAUCUS. What is your view about natural recovery versus reintroduction of wolves?

Mr. DUNKLE. Right at the moment, Senator, we have wolves in Glacier Park. There are some 22 or more that we know about. Some of those have moved out of the park. We know of wolves that are moving down the backbone of the Rockies through the Bob

Marshall Wilderness area that are seen off and on. There are reports of wolves in Yellowstone.

And I would say with protection, with understanding, without the onslaught of a wolf being the bad guy—and I am not going to take a chance on any fairy tales today; I was caught off base with mine the last time—I would say that the wolves will continue to recover themselves, will continue to show up. And I think within the next decade you will see wolves in some of those areas, the more remote ones, and I think they will come back.

We would hurry it up with a recovery plan, but that would be more detrimental to the wolves if everybody were opposed to their introduction than if we could work out something where people would accept and support a reintroduction.

Senator BAUCUS. Mr. Bean, what is your view of natural recovery versus introduction of wolves, say in Yellowstone?

Mr. BEAN. Certainly, if natural recovery can occur, that is a very welcome phenomenon. I think it is an atypical phenomenon for most speices. In most cases, for most species under this act, it is going to be necessary to use active management to bring about recovery.

Senator BAUCUS. Would you wait to see whether natural recovery works?

Mr. BEAN. In the case of the wolf, I think it would not be well advised to wait and see whether it works. For one thing, whether the movement of wolves across the border from in Canada into the United States constitutes natural recovery or simply displacement as a result perhaps of logging activity and other developments north of the border is really unknown at this point.

So to characterize it as recovery may be premature. Certainly it is a movement into our territory for reasons that may not be fully known at this point.

Senator BAUCUS. Mr. Robertson, do you have a view on that?

Mr. ROBERTSON. Yes. The folks from Montana tell us that wolves are alive and well, especially in the northern section of the State. Whether they come from Canada through displacement or through expansion of range, they are, nonetheless, there.

The State of Montana would like to get behind the wolf recovery plan. But they feel very much restricted, especially under the Eighth Circuit ruling, in getting behind that plan. Wyoming also feels the same way.

Senator BAUCUS. I caution all of us to go slow, because it is a very, very difficult question, obviously. Livestock is involved and people are involved. Yet there is the desire to protect and encourage the species. Again, I encourage all of us to go very slowly.

Thank you, Mr. Chairman.

Mr. DUNKLE. Mr. Chairman, could I add something?

Senator MITCHELL. Go right ahead, Mr. Dunkle.

Mr. DUNKLE. I would assure you, Senator Baucus, that slowly might not be the term, but carefully would be what we will do.

Senator BAUCUS. Carefully is a better word. Thank you.

Senator MITCHELL. Dr. Evans, we do not want you to go home and feel you have wasted your visit here.

I have a couple of questions for you. I understand that there are only 19 currently listed species for which the National Marine Fisher-

ies Service is responsible. And of these, 13 were automatically listed when the act was passed by virtue of having been listed under predecessor legislation by the Secretary of the Interior. That means that in 13½ years under this act, your agency has listed only six species and only three recovery plans have been completed. Are those facts correct?

Mr. EVANS. I believe we have 21 species listed at the present time, sir. As far as the recovery plans, we have a recovery plan for the monk seal and recovery plans for sea turtles. We do not have recovery plans for other species but are in the process of putting those together right now.

Senator MITCHELL. So in 13½ years, you have listed eight as opposed to six.

Mr. EVANS. That is correct, sir.

Senator MITCHELL. On page 2 of your testimony, you indicate that listing of the Chinese river dolphin, as well as other river dolphins from India and South America, is under consideration. Because these are foreign species, is it correct that the only restriction that the act can impose once they are listed is a prohibition on their importation?

Mr. EVANS. That is correct, sir.

Senator MITCHELL. Is it not true that importation of these species is already barred under the Marine Mammal Protection Act?

Mr. EVANS. They could be brought in under permit, sir, if they were not listed as endangered species. However, they also are CITES, appendix 1 species. So if we were dealing with another CITES member, there would not be any importation.

But some of the nations that are involved in that do not belong to CITES. So it is necessary to increase the protection and to ensure that there is no movement, at least as far as the United States is concerned. The United States currently has the largest number of oceanariums and marine parks and zoos of any country in the world so it would represent a relatively large market. There has been some desire on the part of some organizations for having fresh-water dolphin displays.

One of the reasons we are looking at this is to see whether or not there is need for additional protection of this very highly specialized group of animals, which are under a great deal of pressure in all of the countries where they exist.

Chinese river dolphins are probably down to maybe 200, 300 individuals right now.

Senator MITCHELL. Has the service ever assessed the marine species in our own waters, the mollusks, crustaceans and noncommercial fish by near-shore coastal waters and estuaries to determine which of them may warrant listing under the act?

Mr. EVANS. The answer to that is with the exception of a couple of species, the totoaba, because there was a great deal of importation of that fish from the Sea of Cortez into the United States, and shortnose sturgeon: there are no other marine fish listed.

We have not listed any other mollusk species or any other invertebrates. We have conducted status reviews of several species to determine whether there is any need of listing them as threatened or endangered.

Since October, I have been reviewing the policies of the National Marine Fisheries Service in regard to the listing of species under the Endangered Species Act. We are now in the process of changing, I think in some cases rather dramatically, those policies.

We are looking closely at species states have listed as "no-take", that is certain species of invertebrates, which some of them have listed or fish that States believe are not-for-take because their populations are depleted in those states.

Senator MITCHELL. My question was: have you done an assessment of that? I gather your answer is no.

Mr. EVANS. The answer is no, we are in the process of doing it at the present time.

Senator MITCHELL. Thank you.

I want to ask Mr. Husnik one question. Under the act, the Secretary of Agriculture has responsibility for enforcing controls over imports and exports of plant species listed pursuant to the act or to the Convention on International Trade in Endangered Species, CITES. The authority has been delegated to your service, the Animal and Plant Health Inspection Service.

Since 1981, your service has referred only two cases to the Justice Department for prosecution. By contrast, the Fish and Wildlife Service, with admittedly broader jurisdiction, has referred 986 cases over the same period.

My first question to you—and I will ask two at the same time—is it a fair inference from this low level of referrals that you are not doing your job? And if not, why not?

Mr. HUSNIK. Mr. Chairman, I think, one, we have to consider that there is a difference, in our opinion, between enforcement and investigation of alleged violations of the act. As far as the enforcement of the act is concerned, when you consider that on imported plant material approximately 263 million plants come into the United States every year, and of that large group of plants that are inspected by inspectors at ports of entry, about 245 shipments last year contained endangered species.

Senator MITCHELL. You say 245 out of 263 million?

Mr. HUSNIK. Shipments, of which about 9,000 were seized plants.

We feel that the bulk of the violations involving imported plants are really ignorance of the law and seizure of those plants and placing them in rescue centers is sufficient penalty. There is no question that there are deliberate violations. Smuggling attempts. Mr. Dunkle already alluded to them in conjunction with cocaine or narcotic smuggling. Those have been encountered. Falsification of documents, misrepresentation of the identification of the material, all these are problems which we try to address over enforcement effort.

The investigation of an alleged violation is handled by our Office of Inspector General. APHIS, as an organization, does not have investigatory capability at this time. That is turned over to our Office of Inspector General. Depending on the nature of the violation, they, or they in conjunction with the Fish and Wildlife Service, handle investigations of alleged violations.

Now, over the last few years, to our knowledge, we have had reports of about on the average five or so alleged deliberate violations of the act, which we have looked at. And the actual prosecu-

tions or penalties resulting from those allegations run about one or two a year.

Senator MITCHELL. Thank you, Mr. Husnik.

Senator Graham, do you have any more questions of this panel?

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman. I have one quick question for Mr. Husnik.

We have received for the record testimony from Dr. Faith Campbell of the Natural Resources Defense Council. I must say her statement is a stinging indictment of your department's efforts to enforce the act. I wonder if you would be good enough to answer that for the record.

Mr. HUSNIK. I do not know what her stinging indictments are. I am not aware of them.

Senator CHAFEE. We will furnish that to you. She lists a series of points, and if you could answer those point by point, give us your rebuttal in writing.

Mr. HUSNIK. I will submit those to you.

Senator CHAFEE. Dr. Evans, again, I join the Chairman in wondering, to put it harshly, about these developing guidelines and recovery efforts in listing new species. It does not seem to me your record is very good.

But just so you will not go away too depressed—or maybe it runs off your back; I don't know.

But in any event, what you are doing with the sea turtles, as you have discussed in your testimony with the so-called TED, the new gear to reduce the incidental catch of the sea turtles by the shrimpers, sounds pretty good. It is going into effect this year, is that right, July?

Mr. EVANS. Yes, sir.

Senator CHAFEE. I hope it meets your expectations. It sounds hopeful. I urge you to continue efforts like that but also to heed the Chairman's warning about doing a little more on the listing of new species.

Mr. EVANS. Yes, sir. Senator Chafee, I would like to add one thing, since you mentioned the turtle excluder device, or the trawl efficiency device. We recently received information from the Mexican Secretary of Fisheries that Mexico has initiated an immediate program to institute the use of turtle excluder devices in the entire Gulf of Mexico for all of the Mexican fishing fleet. Although we have some exemptions in some of our areas, there are no exemptions mentioned in the Mexican proposal.

Senator MITCHELL. Thank you Dr. Evans and Senator Chafee.

Senator Baucus, do you have any further questions?

Senator BAUCUS. No questions, thank you.

Senator MITCHELL. Gentlemen, thank you very much for your testimony today. It may be very useful, and we look forward to working with you on this matter. There will be additional questions submitted to you in writing, and we ask for your responses as promptly as convenient for you. Thank you very much.

Senator Graham will introduce the next witness for the panel.

Senator GRAHAM. Thank you, Mr. Chairman.

I am pleased that Mr. Jimmy Buffett is able to provide to this committee his testimony relative to his work as chairman of the

Florida Save the Manatee Committee. Mr. Buffett has served in this position since 1980.

I recommend it as an outstanding example of Federal/State cooperation through funding provided by the Endangered Species Act for the protection of a particularly vulnerable and endangered marine mammal. The manatee is a large marine mammal which lives in both fresh and salt water. It is especially vulnerable, since it tends to congregate in those areas of rapid population growth in our State. It is an animal which is our State's designated marine mammal, a highly intelligent and very important part of the life of our State.

The committee, of which Mr. Buffett has been the chair for 7 years, has, as its role, to encourage public and private action which will protect this very important, special species to America and to the State of Florida.

I am pleased to introduce Mr. Buffett.

Senator MITCHELL. Mr. Buffett, welcome. Your full written statement will be inserted in the record, and we ask you to make approximately a 5-minute summary of it. Then there will be questions by the witnesses.

STATEMENT OF JIMMY BUFFETT, CHAIRMAN, FLORIDA SAVE THE MANATEE COMMITTEE

Mr. BUFFETT. Thank you, Senator. I do not want the volume of material to alarm anybody. This was a two-page statement originally, but coming to Washington, in big print, it turned to 14—the nature of the game, I guess.

Mr. Chairman, and members of the committee, I would like to thank you for the opportunity to appear before you today regarding the reauthorization of the Endangered Species Act. Though it may seem to some people that I spend the majority of my time in the mythical land of Margaritaville, I felt it necessary to make this trip to the sometimes mythical land of Washington and lend support in any way I can to the very real world need for this important piece of legislation.

I would like to briefly outline to the committee today our recent efforts in Florida to preserve the manatee, our State marine mammal, and promote a more common-sense approach to development along with managing our natural resources in order to preserve a unique quality of life for our children and theirs to come. I hope that my testimony today will be informative and useful and will lead to the reauthorization of the Endangered Species Act.

Somewhere back on the videotape of my life, I managed to acquire a journalism degree, which I have not really used much, so this is an opportunity for my parents to finally see that I have put it to work in preparing this outline for you today on the manatee in Florida.

Manatees are docile creatures who like to hang out in the springs and rivers of north Florida during the warm months and, as winter approaches, they move to the warmer habitats in the south, not unlike most humans that I know. However, their migratory habits expose them to the greatest threats of extinction.

Boat collisions, flood gates and locks and the winter weather itself are all life-threatening encounters for the manatee. They once thrived in the coastal waters of the Gulf of Mexico and up the Eastern Seaboard to the Chesapeake Bay, but their encounter with man, their only natural predator, has truly taken its toll.

Seven years ago, I met Governor Graham after a concert of mine in Tallahassee and volunteered my services to try to increase the public's awareness of the plight of the dwindling manatee population, which at that time stood at less than 1,000 animals, mostly congregated in Florida. I told him that I did not just want to use my celebrity status as window dressing and I wanted to take an active role in attacking this problem.

The Governor promptly responded by appointing me the chairman of the Save the Manatee Committee, and I quickly went out and bought a copy of Robert's Rules of Parliamentary Procedure, convened our first meeting, and hopefully we have produced some results.

Today, I feel our efforts of the Save the Manatee Committee and the availability, more importantly, of the funding through the Endangered Species Act have succeeded in making the public in Florida more aware of the problem, by use of our self-produced public service radio and television commercials and our establishment of Save the Manatee clubs in the elementary school systems in Florida and, particularly, our fund-raising efforts with our manatee adoption program.

The funds also made available to the State through the Endangered Species Act provide for the operation of manatee sanctuaries and enforcement of the provisions of the act.

The U.S. Fish and Wildlife Service and the Florida Department of Natural Resources exhibit an ideal framework in our State in which Federal and State agencies cooperate for a common goal. The funds that were appropriated by the present act have really laid the groundwork for our program of county-to-county protection and radio telemetry identification.

The continuation of these funds through the reauthorization of the Endangered Species Act will, for the first time, give us a good grip on the tools that we need to ensure the survivability of the manatee in Florida.

We still face many day-to-day problems: irresponsible boat operators in our waterways, developers only interested in profits and not responsibilities. But the tide, I feel, is changing. We have made the protection of endangered species and the proper management of all of our natural resources an issue that cannot be taken lightly in our State.

Floridians today are more aware of their obligation to protect endangered species and their habitats. We live in a very fragile ecosystem in our State, and I believe that there is more to being a citizen than just buying a boat or filling up your swimming pool, because we cannot destroy the essence of what makes Florida such a unique place to live.

The manatee symbolizes, to me, that quality of life that we all seek: to be able to go about our daily lives in the most pleasant surroundings. Our work with the manatee, I hope, can serve as an ex-

ample of what can be accomplished for other species that come under the protection of this act.

I believe that endangered species are as much a national treasure as monuments, battlefields and parks. But as a realist, I know that this administration seems to look at protecting the environment as a very low priority issue, but I believe there is no more paramount issue. We live on a big round time share here; and if we, as humans, want to assume the role of landlord, then I believe it is our responsibility to take care of the tenants.

We are the reason that endangered species exist, and I believe that the care and protection of endangered creatures and the environment reflects the kind of humane spirit that is needed to logically proceed in solving many of our other problems.

In closing, I would like to add that I consider myself very lucky to have been able to travel this country as much as I have and to see the true, natural beauty of America. I know firsthand the serenity of days at the beach in the Dry Tortugas or floating the Yellowstone River for a whole day or watching the whales in Hawaii and swimming with the manatees in the Crystal River of Florida. These are things that really inspire me to write.

The reauthorization of the Endangered Species Act, I feel, will hopefully enable many other citizens of this country to share similar experiences and thus realize why we must protect those creatures who cannot protect themselves against the irreversible march of man and his technology towards the 21st century. I feel that it is the responsibility of all of us to make sure that we all get there together.

Thank you very much, and I would like to answer any questions you may have.

Senator MITCHELL. Thank you very much, Mr. Buffett, for a very eloquent statement.

I gather from your remarks that the cooperation under the act between the Federal agency, the service, and the State agency was a crucial factor in the success that you have had to date in the manatee program.

Mr. BUFFETT. That is correct, Senator. I was talking actually yesterday with my field people, as they were calling desperately when they heard that I had the attention of your committee, to reiterate to me specifically certain programs that I mentioned in my statement: the telemetry radio tracking and county-to-county accountability of the manatees.

In particular in Florida, I think that we can be especially proud of the State and Federal interreaction between our agencies there. In the years that I have been exposed to the works of people in the field, it really is, I think, a shining example that other people should emulate.

Senator MITCHELL. So you would regard continuation of funding under the State grant program as an important aspect of reauthorization of this act, to continue that kind of cooperation?

Mr. BUFFETT. Absolutely. I think that is very important.

Senator MITCHELL. Thank you very much, Mr. Buffett. I will defer now to Senator Graham.

Senator GRAHAM. Mr. Chairman, I do not have any questions.

I wish to express my appreciation to Mr. Buffett for his contribution to this effort within our state, which I believe is a role model of State, Federal, and private cooperation and has rendered great dividends to the manatee and to the quality of life in Florida. I believe it is a case study of why this program needs to be continued.

Senator MITCHELL. Thank you very much, Senator Graham.

Senator Chafee?

Senator CHAFEE. Thank you very much, Mr. Chairman.

I would like to ask Governor Graham a quick question here, since he has been experienced in this matter. It seems to me the amounts that come under this section 6 are so small that I just wonder if they do much. From your experience, do they amount to a catalyst, as it were, for the States to do more? Sometimes you wonder whether it is worthwhile. If we are not going to do enough, why even have that section of the funds?

Senator GRAHAM. Senator, I believe they are catalytic. I believe that a strong case could be made for increased funds, as was indicated in panel 1. Of the some 40 endangered species in Florida, only eight are currently being covered by the Federal program. That means that the other 32 are being carried entirely by State efforts or are not being dealt with at all.

In addition to the catalyst for the types of initiatives that Mr. Buffett has just outlined, focusing this degree of public attention on the manatee has stimulated and directed other programs such as the State's land acquisition program. We have made millions of dollars of acquisitions through the State Environmental Land Acquisition program, in areas that are a particular habitat of the manatee, a priority that has largely been set because of the degree of public awareness of the importance of this species and its vulnerability.

Senator CHAFEE. And absent the funds of section 6, modest though they are, and even under the expanded amount, which would be tiny, you think it does something.

Senator GRAHAM. Yes. I believe that it is a statement to the people of a particular community or State that this is a national priority and it is a facilitator for the larger efforts that will be required, whether they are in the State of Florida, relative to the manatee, or in the State of Montana, relative to the grizzly bear, that are going to be necessary.

Senator MITCHELL. I want to note that Senator Graham is not only an excellent questioner, he is a superb witness as well.

Senator CHAFEE. As a matter of fact, we have seen him as a witness in the past.

Mr. Buffett, give us a bit of encouraging news. You started out with a thousand, I think you said. Are the manatee coming back?

Mr. BUFFETT. I wish that I had more encouraging news than I can honestly tell you. I think what we have mainly been able to do is make the problem one that the people are aware of. Our population seems to be remaining stable. Our biggest threat at the moment that we are trying to attack is the collision and boat-kill numbers in our State which, to me, has a direct bearing on the influx of population that rises 800 people a day in Florida.

I think in those areas which our committee is trying to deal with, it is not a very popular issue. But I feel fully warranted in

going after some kind of a licensing for boat operators in our States, because our statistics show that our manatees, though people are aware of them, the number that is killed in the collision category is what is most effectively damaging the population. And if people had a bit of knowledge as to which side of a red marker to go on in the Intercoastal Waterway, I think that would help.

I think that also by our awareness, we have now in our State a program which is a trust fund that is supplied funds by a box in boater registration applications where you can donate a certain amount in a particular county in Florida towards the manatee, a State trust fund.

Encouraging news is that we have seen the problem. I think that people are more aware about the overall situation of the environment and endangered species in Florida than they were before we started our program. For those reasons, I think that we are on the right track and hopefully will continue and have more positive input.

Senator CHAFEE. Good luck to you. We all appreciate what you are doing. Keep it up.

Mr. BUFFETT. Thank you.

Senator CHAFEE. And your mother and father should be proud of you.

Senator MITCHELL. Senator Baucus?

Senator BAUCUS. Thank you very much, Mr. Chairman.

Mr. Buffett, I wonder if you could tell me a little more about manatees. We do not have many in Montana.

Mr. BUFFETT. I think they hang out in bars in Montana.

Senator BAUCUS. What conflicts are there with the manatees? You said unfortunately boaters sometimes run into them. Are there any other conflicts? In particular, are there any commercial conflicts with the manatee?

Mr. BUFFETT. Strangely enough, we have a particular situation in their habitat. Manatees seek warm-water environments, particularly in the winter months. Though some people do not think winters in Florida are harsh, to our animals down there, they are. We lose animals to the influx of cold fronts coming from your way down our way.

They congregate in warm-water areas around powerplants, which is really beneficial. We have a program with Florida Power and Light in which they watch the manatee sanctuaries.

We try to attract the manatee in their migratory routes in order to study possible ways to avoid as much confrontation with the waterway traffic as possible.

Senator BAUCUS. So there are no commercial conflicts. For example, porpoises sometimes get mixed up with tuna.

Mr. BUFFETT. There is a bit of a commercial aspect into the ways that the drain-off from insecticides and pesticides into the waterways gets into the food chain. The manatee is a vegetarian and needs foliage. We are seeing some results of death because of that, yes.

Senator BAUCUS. What I am really getting at is the next time you are floating the Yellowstone, give some thought to how we can resolve some of the commercial conflicts that the wolves and the grizzlies have with the Endangered Species Act. There are a lot of

livestock operators that have their animals eaten up by grizzlies, and they are not too keen to see any more grizzlies.

Mr. BUFFETT. We happen to be the only predator the manatee has.

Senator BAUCUS. Thank you very much.

Senator MITCHELL. Mr. Buffett, thank you very much for coming. It was a very fine statement, and we appreciate your help in this area.

Mr. BUFFETT. Thank you, Senator.

Senator MITCHELL. The next panel will consist of Mr. Roland Fischer, Mr. Tom Pitts and Mr. Christopher Meyer. Would they please come forward?

Welcome, gentlemen. You were present, I believe, during the earlier witnesses' presentations, so you are aware of the committee rules. Your statements will be placed in the record, and I ask you to summarize them in 5 minutes and observe the red light when it comes on.

Mr. Fischer, we look forward to hearing from you.

STATEMENT OF ROLAND C. FISCHER, SECRETARY-ENGINEER, COLORADO RIVER WATER CONSERVATION DISTRICT

Mr. FISCHER. Mr. Chairman, thank you for the opportunity to appear here today. Our statement has been submitted, and I would call the committee and their staffs' attention to the map which has been submitted and associated with it.

The Colorado River Water Conservation District is a political subdivision of the State of Colorado. We are concerned here today with the Endangered Species Act as it may relate to, number 1, its reauthorization; number 2, a fish that is called the Colorado River squawfish; and three or four others.

We are here today to support the reauthorization of the act for a 2-year period. We concur with Mr. Dunkle, except for the term, in that it would give an opportunity to review the progress of the act and the rules and regulations under the act which might at some point in time require summary adjustment.

Mr. Chairman, the importance of the Endgangered Species Act to the Colorado River Water Conservation District is here today shown by the attendance at this hearing of three of our directors, including the president and the vice president of the Colorado River Water Conservation District.

We support the Colorado Water Congress plan, as worked out and specifically worked out in cooperation with Mr. Dunkle, who is now director of the Fish and Wildlife Service. We are concerned about the ability to apply Colorado's share of the Colorado River to beneficial consumptive use under two congressionally ratified interstate compacts.

We think that the Endangered Species Act and Colorado's doctrine of appropriation of water to beneficial use can work in harmony. We think that the Colorado Water Congress-sponsored recover plan, developed in cooperation with Mr. Dunkle, is probably the optimum approach at this point in time.

I would call to the attention of the subcommittee and their staffs that Colorado is one of the States that has a specific statute to ap-

propriate water instream for protection of the natural environment and, to that extent, has led the way in western States for, I would say, some compatibility with the Endangered Species Act and the appropriations system.

We have made some specific recommendations in our statement which I commend to your staff. With that, Mr. Chairman, I thank you for the opportunity and will be happy to answer questions and will be happy to answer questions following my testimony.

Senator MITCHELL. Mr. Pitts, welcome.

STATEMENT OF TOM PITTS, COORDINATOR, COLORADO WATER CONGRESS

Mr. PITTS. Thank you, Mr. Chairman. My name is Tom Pitts. I am a professional engineer from Loveland, CO. For the last 3½ years, I have been served as project coordinator involved for the Colorado Water Congress Special Project on Threatened and Endangered Species.

Two years ago, when the Colorado Water Congress testified before your committee, we pledged our efforts to resolving conflicts between the Endangered Species Act and water development in the Upper Colorado River Basin and the Platte River Basin.

We have been working diligently and in good faith with the Federal and State Government agencies, environmental interests, and a broad spectrum of water interests to resolve those potential conflicts. I would like to briefly report on those efforts, because they constitute the underpinnings of our recommendations for legislative action on the Endangered Species Act.

We are asking for no substantive changes in the act, and the amendments that we are proposing are designed solely to support those positive efforts in the two river basins.

In the Colorado River Basin, after 3½ years of efforts by Federal and State agencies, water interests and environmentalists, we have a success story to report to the committee. We have come to an agreement on the manner in which to resolve potential conflicts between the Endangered Species Act and future water development in that area.

The agreement is based on a comprehensive recovery program for three endangered fish species. It involves long-term funding for the recovery program, only a part of which will come from the Federal Government. It includes a time frame, institutional responsibilities, a program for water management to provide habitat for endangered species that is consistent with State water law and, in fact, will provide flows that will be protected under State water law for endangered species.

The program itself is described in some detail in my testimony, and we can provide additional documentation upon your request. This program represents a radical departure from what was at issue 2 years ago. That was the so-called Windy Gap approach, wherein water project developers paid a depletion charge to the Federal Government to offset project impact under section 7.

Section 7, as you well know, does nothing but maintain the status quo. The program we are proposing and the Water Congress is supporting will lead to the recovery of those species.

This program has been endorsed by the Director of the Fish and Wildlife Service in Denver, two directors of regional offices of the Bureau of Reclamation in Billings and Salt Lake City, the State of Colorado and the State of Utah, and we expect an endorsement from the State of Wyoming very shortly. A copy of that endorsement is attached to my written testimony.

The program has also been endorsed by the Colorado Water Conservation Board, which is responsible for instream flow management in the State of Colorado, the Colorado Wildlife Commission, Board of Directors of the Water Congress, and the Utah Water Resources Commission.

The program will require some Federal funding. What we are asking for from the Congress is authorization and appropriation of $10 million to acquire habitat in the form of water rights in the Upper Colorado River Basin. This is consistent with section 5 of the Endangered Species Act. And it provides a mechanism for not only avoiding conflict with the State water rights system, but allows the State water rights system to provide the legal protection that is needed for that habitat.

In addition, we are asking that by March 1, 1988, the Congress require the Secretary of the Interior to report on the progress of the two basin committees, in the Colorado Basin and the Platte Basin. We think this will keep our efforts at a high profile. It would signal to all of us involved in these efforts that the Congress cares about what we are doing, supports what we are doing, and expects support from the Secretary of the Interior for these efforts.

We ask that where these basin committees come up with plans that are consistent with the Endangered Species Act and State water law, water allocation systems, and interstate compacts, that the Secretary be directed to implement of those plans.

We ask for this in the context of a 2-year reauthorization. We think that the 2-year reauthorization would help support our efforts to maintain a high profile for these activities, and would lead to a timely review by Congress of our progress, as well as any recommendations the Secretary might make regarding changes in Federal or State law or regulations that support our activities.

We have a success story in the Colorado River Basin. We are optimistic that we will achieve the same results in the Platte River Basin. The Platte River Basin Coordinating Committee was instigated at the request of the Colorado Water Congress, the Nebraska Water Resources Association, and the Wyoming Water Development Association to the Secretary of the Interior to establish that cooperative effort.

We are optimistic that we will also succeed there, with continued good-faith efforts by all parties. Thank you.

Senator MITCHELL. Thank you, Mr. Pitts.

Mr. Meyer?

STATEMENT OF CHRISTOPHER MEYER, NATIONAL WILDLIFE FEDERATION, ROCKY MOUNTAIN NATURAL RESOURCE CLINIC, BOULDER, CO

Mr. MEYER. Thank you, Mr. Chairman. My name is Christopher Meyer. I live in Colorado and I work at the National Wildlife Fed-

eration's field office in Boulder. I also teach law at the University of Colorado. I have submitted my written testimony and will take a few minutes to sum up.

This committee has heard time and time again, year after year, that the Endangered Species Act does not work out West, that it needs fixing up. We have heard three problems: one, that there is too much delay; second, that there is not enough water to go around; and third, that Federal endangered species concerns cannot be easily integrated into western State water allocation systems.

I was delighted to hear testimony of Mr. Fischer and Mr. Pitts this morning indicating that the third problem has gone away. I certainly agree. Western States have moved forward although they have not gone as far as we would like to see toward recognition of instream flows. I think that we have seen good progress there.

On the first issue, the question of delay, I think the best response is to turn to the GAO report which was released just this morning, which indicates that out of 3,200 consultations on western water projects, just 68 of them resulted in increased delays, changes, modifications, increased cost, and so on.

I would suggest, as well, that to the extent that delays have occurred, they may be attributed just as much to the water development community as to the Endangered Species Act. Millions of dollars have been spent by the water development community on lawyers fighting the Endangered Species Act, money which well could have gone towards solving the problem. And I suggest that we would be farther along had that money been aimed toward that target.

On the final question of whether there is enough money to go around, I would like to turn the committee's attention to the example of the Platte River, where the National Wildlife Federation has focused its efforts over the last decade. The Platte River was described by the settlers that first moved West beyond the Missouri River as a mile wide and an inch deep. Indeed, it was a startling river.

I have some photographs which I have brought with me and Scott Feierabend of the National Wildlife Federation has put on the easel. This was a photograph taken in 1866, which we found in the archives of the Union Pacific Railroad. It shows a fellow sitting on the banks of the Platte looking out at a river which very much meets that description.

It should be noted in particular that the river is completely free of vegetation, which is essential for the habitat which it provides to a total of 240 species of migratory waterfowl, including three endangered and one threatened species as well as that of half a million sandhill cranes and millions of ducks and geese.

But this river has been substantially changed over the course of time. In 1979, the U.S. Geological Survey went out to the very same spot and took this photograph. I would like to make clear to the committee that moving from one bank to the other—and Mr. Feierabend is showing where that is—that area which is now completely covered with trees was the same area which we saw in open channel in 1866.

This is the result of depletions by the water development community, which now has irrigation projects in place which removed and consumed a total of 70 percent of the water in the Platte. The consequences, I think, are rather dramatic.

I should point out, though, that the entire Platte River has not been destroyed. This destruction is upstream of the critical habitat of the whooping cranes and other endangered birds. But it is moving forward toward the East, toward the critical habitat. And if the problem is not resolved, if the destruction is not checked, we may see loss of a habitat which forms the hourglass of the central flyway, where millions of birds of all descriptions funneled down over the Platte River before spreading back out for the rest of their migration.

The water development community has called for balance, but they have already taken 70 percent of the water out of the Platte River. What we need to do with the remaining 30 percent is actively manage that river.

A study was commissioned by the Whooping Crane Trust which determined that if the Kingsley Dam, which sits on the North Platte River, was reregulated to provide as its first priority agriculture, as its second priority wildlife—whooping crane needs, and its third priority hydroelectric power, over the 39-year study period, based on historical data, we would have been able to meet 100 percent of the agricultural need, 95 percent of the whooping crane needs, and 95 percent of the hydropower.

I think this suggests that there are problems out there that can be solved, but we need to move forward expeditiously with the task of solving them.

I think the most important thing which this committee and this Congress can do is send a very strong and clear signal to the water development community that the act isn't broken, there is no back door, and it is time to get on with the task of solving the habitat problems.

Consequently, we call for a five-year reauthorization of the bill.

Senator MITCHELL. Thank you very much, Mr. Meyer.

Mr. Meyer in his remarks made reference to the GAO report and I previously alluded to it. I understand that you gentlemen have also had a chance to take a look at it. If that is correct, I would like to ask you for your reactions to the report and specifically to its findings that of the more than 3,000 consultations between 1977 and 1985 the act has had little effect on western water projects.

Mr. Fischer, would you care to comment on that?

Mr. FISCHER. Mr. Chairman, I would. I would say that from what I read, which was a packet of selected pages, that the report is rather simplistic in its approach. It is approached from Washington, DC with very little hands-on field experience.

I would comment that the report heavily emphasizes the reactions and the comments mostly of Federal agencies, with one exception: a power cooperative. We find that the Federal agency heads who were queried by the report probably had not been in the field.

I will give you an example. The Redlands Power and Water Association on the Gunnison River in Colorado applied to the Federal Energy Regulatory Commission to upgrade a small power plant.

The delays that have been associated with the consultation have really been almost unconscionable.

I will be happy to submit for you and your staff to review a letter which the river district is sending wherein the Fish and Wildlife Service was so intense in the creation of a fish ladder for the Colorado River squawfish that they were telling the local irrigation and power company how to design a trash rack. We think that this is a little bit beyond normal consultation. (See p. 178.)

So I think that the pages I have read of the GAO report basically take a broad view, which they must, but nevertheless it is rather simplistic and has almost no hands-on review from people who have applied for consultation and that the GAO report could have been better if they had gotten out of Washington and went to someplace like the Redlands Power Canal.

Senator MITCHELL. Is it your understanding that the GAO did not leave Washington, did the entire report without having left Washington?

Mr. FISCHER. From the pages that were selected for my review, that is my impression, Mr. Chairman.

Senator MITCHELL. I wonder if you might take a look at the whole report and submit a written critique with any further specific criticism.

Mr. FISCHER. I look forward to that opportunity. (See p. 124.) As I understand it, the report was embargoed until this morning, and we, quite frankly, only got a chance to review those selected pages.

Senator MITCHELL. Mr. Pitts?

Mr. PITTS. Thank you, Mr. Chairman. I think the citation of the statistics from the report indicates 6,000-something water projects and probably reflects a great number of what might be considered minor consultations. Consultations on major projects have cost project sponsors money.

I think also there is some form of delay involved. On page 20 of the report, they indicate that 151 days or more were required for a number of consultations. What happens in the consultation process—there is a legally mandated limit of 90 days—is that as that 90 days approaches, the project sponsors are often told that well, you have to give us some more time or otherwise the only alternative we have is a jeopardy opinion.

That form of intimidation often results in requested extensions by project opponents.

As far as delaying actual projects themselves, I think most people who are involved in the water project business are well aware of the requirements of the Endangered Species Act and program that in, so as not to cause an actual delay in construction.

However, the costs associated with complying with section 7 consultation and information requests have become quite substantial. In many cases, projects are normally planned, and planned very well, to meet monthly demands, and monthly storage needs. They often find themselves being asked for information on daily flow impacts, hourly flow impacts, the kind of information that costs a great deal to develop and which often, from a biological standpoint, cannot be evaluated.

So there are those kinds of things happening. There are increased costs involved, associated with section 7. And the consulta-

tion period often goes beyond the 90-day legally mandated requirement.

Senator MITCHELL. Thank you, Mr. Pitts.

Mr. Meyer, do you want to make any further comment on the GAO report?

Mr. MEYER. Yes, Mr. Chairman, I would be happy to. I think that the statistics are meaningful. What the report indicates is that we are looking at really only a very few instances of protracted conflict. The vast majority of these consultations have resulted in no delay whatsoever.

I think that, consequently, it is necessary to look at those individual conflicts to see really what is the source of the difficulty. I think more often than not, it becomes apparent that delay might have been avoided.

I think, for instance, of the Enders and Catherland water projects in the State of Nebraska which the National Wildlife Federation has been involved in litigating for a number of years now. These are projects in which we are fighting in State court over water rights, and the project applicant has not even initiated the Federal consultation process.

So what is going to happen if they are successful in obtaining their State water rights, then we will start the whole game all over again. And undoubtedly, we will hear those developers coming to this committee, complaining about delays.

The Riverside Irrigation District case is another example arising in Colorado, where the project proponents were told that they might be able to proceed with their project so long as they adopt reasonable mitigation measures, land clearing and so on, downstream on the Platte River. But rather than accepting those modest requirements, they proceeded to litigate the matter up through the court of appeals.

I think that in the long run we are going to be able to solve these problems. But what we need to do is get on with the task of looking at the habitat rather than figuring out where the back door is to the Endangered Species Act.

[The following letter was received relative to Mr. Meyer's testimony:]

CROWELL & MORING
1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2505
(202) 624-2500
CABLE: CROMOR
TELECOPIER (FAX): 202-628-5116
TELECOPIER (MAPICOM): 202-628-5118
TELEX: (INTERNATIONAL) 64344
(DOMESTIC) 89-2448

TERRY L. ALBERSON
RICHARD L. BELZER
L. GRAEME BELL III
TIMOTHY M. BIDDLE
ROGER N. BOYD
KENNETH W. BRUNTEL
FREDERICK W. CLAYBROOK, JR.
DANA C. CONTRATTO
ELDON H. CROWELL
JEFFREY J. DAVIDSON
CALVIN DAVISON
W. JAY DEVECCHIO
MARC F. EFRON
CLIFTON B. ELGARTEN
BRIAN F. ELMER
ZACHARY D. FASMAN
VICTOR E. FERRALL, JR.
PHILIP A. FLEMING
DONALD L. FLEXNER
PETER F. GARVIN III
THOMAS P. GIES
RIDGWAY M. HALL, JR.
HAROLD J. HELTZER
W. STANFIELD JOHNSON
R. BRUCE KEENER, JR.
KATHRYN KELLY
PATRICK M. LEE
JOHN A. MACLEOD

ANDREW H. MARKS
HERBERT J. MARTIN
MARK E. MAZO
RICHARD M. MILLAR, JR.
THOMAS C. MEANS
FREDERICK MORING
KENT R. MORRISON
WILLIAM L. NEFF
JOSEPH M. OLIVER, JR.
STEVEN P. QUARLES
PETER J. ROMATOWSKI
GEORGE D. RUTTINGER
JERRY W. RYAN
RICHARD E. SCHWARTZ
VICTOR E. SCHWARTZ
JOHN T. SCOTT III
DAVID B. SIEGEL
LINDA K. SMITH
WM. RANDOLPH SMITH
FRED S. SOUK
JOHN STEWART, JR.
JEAN-PIERRE SWENNEN
JENNIFER N. WATERS
TOM WATSON
HOWARD M. WEINMAN
KAREN HASTIE WILLIAMS
PETER B. WORK

SHAUNA E. ALONSO*
J. ERIC ANDRE*
RAY M. ARAGON*
LAURIE T. BAULIG*
ANITA K. BLAIR
JOHN M. BRANT
FLORENCE N. BRIDGES
LINDA S. BRUGGEMAN
NANCY S. BRYSON
SALLY A. BUCKMAN
KATHLEEN J. BYRNES*
CECILIA A. CANTRILL*
SUSAN E. CHETLIN
M. LISANNE CRONLEY
DIANE V. CUFFE*
KEVIN J. DARKEN*
MARY DILANO*
PAULA J. DESIO
DWIGHT DICKINSON
ROBERT T. EBERT
TONI M. FINE*
KEITH B. FISCHLER
CLINTON J. GARDINER*
KEMBLE H. GARRETT*
CATHY GERHARD*
ELLEN T. GIANNUZZI
DAVID R. GOLDSTALB*
STEVEN J. GOROS*
ALAN W. H. GOURLEY
ROCHELLE H. GUNNER
LORRAINE B. HALLORAN*
ROBERT M. HALPERIN
CAMERON S. HAMBRICK
ROBIN O. HAVUTIN*

PAUL W. KALISH*
DAVID M. KARNOVSKY
ANN R. KLEE*
J. MICHAEL KLISE*
SUZANNE LEVIAN*
PETER R. LEVINE
ERIC B. LIPSETTS
THOMAS R. LUNDQUIST*
CYNTHIA R. MABRY
LIBERTY MAHESHGIAN
CLAYTON B. MARSH*
GAYE ADAMS MASSEY
R. TIMOTHY MCCRUM
RA MOND F. MONROE
ELLEN B. MORAN
BARBARA A. MYERS
MICHAEL D. NEWMAN
WILLIAM F. O'NEILL
KATHLEEN J. RAYNSFORD
PAUL H. REIDL
DIANE ROSH ROSELL
WILLIAM A. SCHMENNESEN*
EILEEN F. SERENE
WARD L. SMITH*
DAVID H. SOLOMON
JAYNE L. SORIN*
BRIAN E. SWEENEY*
PETER A. D. TEARE*
IRMA TYLER-WOOD*
MARK A. WARNQUIST*
ALEXANDRA M. WILSON
LUTHER ZEIGLER
JONATHAN D. ZISCHKAU

OF COUNSEL
MICHAEL J. MULLEN
JAMES J. REGAN

*NOT ADMITTED IN THE DISTRICT OF COLUMBIA

April 24, 1987

The Honorable George J. Mitchell
Chairman, Subcommittee on Environmental Protection
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: S.675 - Endangered Species Act Reauthorization

Dear Senator Mitchell:

We appreciate the opportunity to submit our comments to the record of the hearing on April 7, 1987, concerning S.675, a bill to reauthorize the Endangered Species Act.

Nebraska Public Power District (the "District") is a not-for-profit public corporation and political subdivision of the State of Nebraska. The District owns and operates a water resource project licensed by the Federal Energy Regulatory Commission ("FERC") as Project 1835. Project 1835 serves multiple public purposes, including generation of hydropower, provision of cooling water supplies for the Gerald Gentleman Station coal-fired power plant, and recreational benefits. Project 1835 consists of a network of diversion dams, canals, storage reservoirs, and hydroelectric facilties located on the North Platte and South Platte Rivers. The District purchases and distributes hydropower generated by the Kingsley Hydro, which is located at Kingsley Dam on the North Platte River, upstream of the "Big Bend" reach of the Platte River in Nebraska.

We understand that at the April 7, 1987 hearing of the Subcommittee on Environmental Protection, testimony relating to the Platte River system was presented by Mr. Christopher Myer on behalf of the National Wildlife Federation ("NWF"). We understand that Mr. Meyer presented photographs of the Platte River from 1866 and 1979, which demonstrated "channel narrowing" on the Platte during that time period. These photographs may have left the Subcommittee with the impression that vegetative encroachment on the Platte River has been caused solely by water project development, in particular, by the closure of the Kingsley Dam on the North Platte River.

Based on our review of scholarly studies the biological testimony provided by NWF is, at best, only part of the story. For example, vegetative encroachment in the Platte River channel was well established long before the closure of Kingsley Dam.

- By 1938, three years before Kingsley Dam was closed, approximately 30 percent of what had been shown as open channel on the 1860s maps was covered by wooded, wooded island, shrub, and shrub island types of vegetation. J. Peake, M. Peterson, and M. Laustrup, Interpretation of Vegetation Encroachment and Flow Relationships in the Platte River by Use of Remote Sensing Techniques 34 (Sept. 1985) (report to the Nebraska Water Resources Center by the Remote Sensing Applications Laboratory, Department of Geography-Geology, University of Nebraska at Omaha).

- According to the same report, total channel acreage (the sum of active river channel and sandbar areas) has remained stable. The report estimates that in the 1860s the channel area approached about 64,000 acres. Review of 1938 and 1957 aerial photographs showed 68,000 acres of channel, and 1983 aerial photographs showed just over 69,000 acres. Id. at 34-35.

We believe that the Subcommittee should also know that threatened or endangered species in the area of the Platte River are by no means losing ground or demonstrating adverse effects because of development. The condition of these species has been improving for several years.

- Within the last several years, the bald eagle has extended its range into Nebraska, and its population has grown so much that the U.S. Fish and Wildlife Service has predicted that the bald eagle may be removed from the "endangered" list in a few years. 52 Fed. Reg. 2,240 (1987).

- Interior least terns and piping plovers have increased in numbers in Nebraska during recent years. See Ecological Analysts, Inc., An Evaluation of Historical Flow Conditions in the Platte River as Related to Vegetation Growth and Habitat Use Threatened Interior Least Tern 5-5, 5-6 (1983).

- The whooping crane (which seldom uses the Platte River, apparently preferring other wetland habitat which is abundant in adjacent areas) has dramatically and consistently increased its numbers since 1941 -- the same time period since Kingsley Dam was closed. See EA Engineering Science and Technology, Inc., Migration Dynamics of the Whooping Crane with Emphasis on the Use

of the Platte River in Nebraska viii, 316 (1985); M.A. Howe, Buffalo Corridor (1985) (U.S. Fish and Wildlife Service unpublished manuscript).

- Sandhill cranes which stage on the Platte River are so numerous that the U.S. Fish and Wildlife Service has established hunting seasons for them. U.S. Fish and Wildlife Service Migratory Bird Hunting Regulations, 50 C.F.R. §20.106 (1986).

Further, the various flow regimes sometimes proposed for water projects on the Platte River remain untested -- and strongly disputed -- theories, usually put forth by persons whose knowledge and experience in hydrology and water resources management are extremely limited.

Thank you for permitting us to submit our comments for the hearing record. If the Subcommittee needs any additional information, we will be pleased to provide it upon request.

Very truly yours,

Jeffrey J. Davidson
Attorney for Nebraska
Public Power District

cc: The Honorable James J. Exon
The Honorable Stephen Karnes
The Honorable Virginia Smith
The Honorable Hal Daub
The Honorable Doug Bereuter

Senator MITCHELL. Gentlemen, thank you very much for your testimony. I will have further questions for you in writing, which I ask you to respond to as soon as possible. And I would ask each of you to review the GAO report in its entirety and provide us with your written critique of that report's findings and conclusions.

Thank you very much. We look forward to working with all of you. The hearing is concluded.

[Whereupon, at 11:43 a.m., the subcommittee adjourned.]

[Statements submitted for the record and the bill, S. 675, follow:]

STATEMENT OF FRANK DUNKLE, DIRECTOR, U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION, COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS, U.S. SENATE, ON S. 675, REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

APRIL 7, 1987

- -

Mr. Chairman, I appreciate the opportunity to appear here today to discuss the reauthorization of the Endangered Species Act of 1973, as amended.

As you know, the Act is probably the most far-reaching law ever enacted by any country to prevent the extinction of imperiled animals and plants. Conserving these biological resources is a complex job involving not only the Federal Government, but the States, the scientific community, conservation organizations, industry, and concerned individuals as well. Since 1973, the Congress has enacted a number of amendments designed to make the Act more effective and, at the same time, to increase its flexibility for responding to potential problems. These changes, along with internal administrative improvements in the Federal departments responsible for implementing the Act, have resulted in a program that is running efficiently and cooperatively.

However, for various reasons, the Act was not reauthorized when authority for appropriations expired at the end of Fiscal Year 1985. The program has been proceeding on appropriations provided in the absence of an authorization for the last two fiscal years. This has naturally created a certain amount of uncertainty within the program, and I commend the Subcommittee for moving so rapidly to commence the reauthorization process this year.

S. 675 has been introduced by the Chairmen and Ranking Minority Members of this Subcommittee to reauthorized appropriations for the program for five years. The bill provides authorizations substantially in excess of those proposed by the President's budget. Unfortunately, the Endangered Species program is not the only program, nor FWS the only agency, with a claim on the Treasury. We strongly recommend that the bill be amended to conform with our budgetary recommendations, as set forth in the Administration's reauthorization proposal.

The differences between the Administration's proposal and S. 675 are as follows:

Section 15(a)(1) of the Act would be reauthorized at $23,670,000 for fiscal year 1988, and such sums as may be necessary for succeeding years, rather than the $35,000,000 for fiscal year 1988 (rising to $41,500,000 for fiscal year 1992) provided in S. 675;

Section 15(b) would not be reauthorized at this time, in contrast to the $12,000,000 for fiscal year 1988 (rising to $14,000,000 for fiscal years 1991 and 1992) provided in S.675;

Section 15(c) would be reauthorized for such sums as may be necessary rather than the $600,000 provided for each of the next five fiscal years in S. 675; and

Section 15(d) would be reauthorized at $390,000 for fiscal year 1988 and for such sums as may be necessary for succeeding years, rather than the $400,000 for fiscal year (rising to $500,000 for fiscal years 1991 and 1992) provided in S. 675.

We defer to the Departments of Agriculture and Commerce for a discussion of the authorization amounts included in the Administration's proposal for their programs under the Act.

Finally, we note that S. 675 provides reauthorization for a five-year period. Although we have no policy objections *per se* to that length of time, we do note that not all of the various controversies which prevented reauthorization in the last Congress have been resolved. Under the circumstances, we would suggest that the Subcommittee consider a reauthorization for four years instead, so that the length of the reauthorization does not itself become an obstacle to passage. We reemphasize, however, that we have no objection to a five-year extension if such could be enacted.

A review of our efforts over the past several years may have a bearing on the Committee's consideration of the reauthorization of the Endangered Species Act.

Listing Accomplishments

Since 1982, when the Act was last reauthorized with changes intended to expedite the listing of plants and animals that qualify for protection, over 150 species have been added to the endangered and threatened lists. During 1986 alone, 37 species were listed, including such diverse creatures as the Mauna Kea silversword, the northern aplomado falcon, and the Nashville crayfish. The lists now include 926 U.S. and foreign species.

Despite considerable progress in recent years, however, over 3,000 U.S. species remain candidates for listing under the Act. In order to gather information on these species, the Service has published a series of notices of review that synopsize its assessment of candidate species and former candidates. A revised notice for animals is now in the early stages of preparation, and revision of the notice for plant species is planned for later this year. Although the Act does not afford legal protection for candidate species, Federal agencies, State agencies, and private organizations concerned with species conservation and maintenance of biological diversity use these notices to identify and avoid potential problems and to focus conservation efforts on the most appropriate areas.

Recovery Accomplishments

Restoring endangered and threatened species to the point that they are again secure members of their ecosystems, and thereby no longer in need of special Federal protection, is a most critical element of the Endangered Species Program. Listing a species is of limited value if steps are not taken toward recovery. Our increased emphasis on recovery is reflected in the 167 new recovery plans that have been approved since 1982, over three-fourths of the total of 211 that have been approved since passage of the Act.

This past year the Service took an unprecedental step in species recovery efforts involving the red wolf. In the mid 1970's, the red wolf was on the verge of extinction. Threats to its remaining wild population were so great that the Service decided to locate and capture as many red wolves as possible and to preserve the species in captivity. This capture was successful, and up to this year, the red wolf existed only as a captive breeding population of less than 75 animals. Currently, however, with the assistance of the Point Defiance Zoo of Tacoma, Washington; the State of North Carolina; and by utilizing the experimental population designation provided in the 1982 amendments; the Service is prepared to reintroduce this species back into the wild for the first time since 1975.

6

Presently there are four pairs of red wolves in acclimation pens at the Alligator River National Wildlife Refuge in North Carolina; they are scheduled for release in April of this year. With this release, the Service will have reestablished in it native habitat an endangered species that is now extinct in the wild.

The Service has also put a considerable effort into the recovery of the Southern sea otter. Sea otters were listed as threatened in California in 1977 due to threats of oil spills in the nearshore marine environment. One of the major recovery activities that has been identified is the need to establish a second population of Southern sea otters far enough removed from the parent population that a large single spill is unlikely to decimate both populations. Because the sea otter is also protected under the Marine Mammal Protection Act, difficulties arose in developing a translocation proposal that would be practical and yet satisfy the requirements of both Acts. Legislation developed in this Subcommittee was passed last year that resolved the technicalities and the Service is now preparing to make a decision on translocation. This is a complex and controversial proposal. As such, the Service has provided for an extraordinary amount of public involvement and has taken great pains to ensure that public comments have been given full and serious consideration. The final environmental impact statement is almost completed and the final rulemaking (and decision-making) will be completed in the next several months. Should a decision in favor of translocation be made, the Service hopes to commence the actual movement of otters in August 1987.

This, however, is a highly ambitious schedule that may be delayed because of factors beyond the Service's control.

A revised Northern Rocky Mountain Wolf Recovery Plan is now nearing final approval following more than 3 years of exhaustive review. During this review process the Service has sought to address the concerns of all interested parties while meeting our mandate to recover this endangered species.

Of particular concern is the potential for wolves to prey on domestic livestock and to create conflicts with existing uses of public lands. The Service believes it has the authority to control individual wolves preying on livestock; concerns remain as to whether livestock operators may do so, an item of strong local concern. The Service believes that there will be few, if any, conflicts over land use practices due the extensive wilderness and National Park lands in the recovery areas, and the existing management guidelines for grizzly bears on those lands. Our experience in Minnesota and elsewhere shows that wolves are not particularly sensitive to human intrusion, except at birthing and pup-rearing locations. These areas are extremely limited in both space and duration, and should not cause any conflicts with existing land use patterns. Similarly, because of high birth rates, there will not be the degree of concern over individual wolves that exists for grizzly bears.

As described above, the complex and often difficult task of recovering endangered species is one that is too large for any single agency. A

coordinated recovery program involving Federal, State, and local interests is usually necessary. Such an approach was initiated when the Interagency Grizzly Bear Committee (IGBC) was established. The IGBC is composed of top-level managers from the Fish and Wildlife Service, the National Park Service, the Forest Service, the Bureau of Land Management, and the States of Wyoming, Montana, Idaho, and Washington. It coordinates research, management, law enforcement, and funding for conservation of the threatened grizzly bear in the conterminous 48 States. Recovering this large omnivore in the face of continuing threats cannot be accomplished quickly or easily. In the meantime, close interagency cooperation is being emphasized in a variety of other recovery programs. The agency which manages Federal lands that encompass and surround designated recovery areas must play a key role in any recovery initiatives.

The "experimental population" approach, authorized by the 1982 amendments as a tool for recovery of listed species, is beginning to show results. General regulations implementing the concept were published on August 27, 1984. Special regulations to establish the first experimental population of an endangered species were approved September 13, 1984. Within days, seven Delmarva fox squirrels were captured near Blackwater National Wildlife Refuge in Maryland and released into the Assawoman Wildlife Area, land managed by the State of Delaware. The Fish and Wildlife Service worked in close cooperation with Delaware and Maryland wildlife officials, and has high hopes that this joint venture will hasten the day when the Delmarva fox squirrel is recovered and can safely be delisted. Since this fox squirrel reintroduction, three additional experimental populations have

been identified. Colorado River squawfish and woundfin have been released into the Gila River drainage of Arizona, and as described previously, red wolves are currently on site at the Alligator River National Wildlife Refuge North Carolina, pending an April release. Two other experimental populations are currently in the regulatory development stage, the Southern sea otter for release on the Southern California coast and the yellowfin madtom for release in southeastern Virginia. The success of the experimental population approach to date has been possible due to the cooperative efforts of the Service and the various State conservation agencies. The Service plans to continue using the experimental designation when appropriate to augment its endangered species recovery program.

Interagency Cooperation

Section 7 of the Act, which contains the interagency cooperation process for actions having Federal agency involvement, was substantially amended in 1982. A set of comprehensive regulations that implement these changes, along with modifications required by the 1978 and 1979 amendments to the Act, were proposed on June 29, 1983. There was widespread interest in the proposed regulatory changes and a large number of comments were received. The final rule was published June 3, 1986. The Service believes the final regulations will be effective in minimizing the potential for conflict arising from proposed Federal agency action.

As the number of listed species and Federal actions that may affect them increase each year, so do the numbers of Section 7 consultations. The consultation process involves an exchange of information among the Service, the Federal agency, and any permit or license applicant. It is often possible to resolve potential problems to obviate the need for a formal consultation, particularly at an early stage in the planning process. This is illustrated by the fact that there were over six times more informal consultations in 1986 than occurred in 1979, while the total number of formal consultations decreased 70 percent from 1979 through 1983. The number of formal consultations began to increase in 1984, probably as a result of the increase in the number of listed species and an increased awareness of the Section 7 process. During FY 1986, the Fish and Wildlife Service participated in 10,925 consultations, all but 421 of them informal. Of the 421 formal consultations, 369 resulted in "no jeopardy" biological opinions, and "reasonable and prudent alternatives" for avoiding jeopardy were provided for almost all others.

When formal consultation does take place, it is the Service's goal to both protect the listed species and their habitats and to find a way for the project to proceed. Numerous management approaches are used by the Service to achieve this goal. One of particular interest is being used to protect listed fishes found in the upper basin of the Colorado River system. This approach involves the active participation of Federal and State agencies and project applicants. Working with applicants for projects that are likely to jeopardize the listed fishes, a joint program can be launched

to conserve and manage the water and fish resources. This approach is now being taken in a number of consultations on western water projects.

A recent consultation involving the Concho water snake was one in the Service was able to utilize state-of-the-art instream flow methodology and other techniques to avoid a dilemma. The Stacy Dam and Reservoir is proposed to be constructed within Concho water snake habitat in Texas, and the Service's initial determination was that no reasonable and prudent alternative would permit construction of the project at its proposed site. Questions of water rights and State law prevented construction elsewhere. Legislation was introduced in both Houses of Congress to permit construction, nowithstanding the Endangered Species Act. A considerable controversy, perhaps approaching that of the Tellico Dam and the snail darter, seemed likely.

Immediately after my confirmation in December I examined this situation. From my experience with endangered species and western water issues, I felt there was an opportunity to apply current instream flow technology and explore the development of reasonable and prudent alternatives not considered during the initial consultation. The resources of the Service were mobilized nationwide, and extensive additional work was done by biologists and other specialists not involved in our initial consideration of the project.

The final biological opinion offered a number of reasonable and prudent alternatives which, if carried out with the Stacy project, would avoid

jeopardy to the water snake. The approaches involve rehabilitation of existing snake habitat, restoration of former habitat where the species is no longer found, and maintenance of acceptable stream flows. Additionally, research and monitoring on water snake populations would occur for up to 10 years after construction of the dam.

Although the project sponsor is very concerned over the costs involved, it is our understanding that the Service's recommendations will be accepted as a condition for issuance of the necessary Federal permits. The Service's role in this consultation was not to stop the project but to give scientific advice and provide alternatives that would avoid jeopardizing the water snake. For some project (less than 1 percent), it is not possible to develop any such alternatives, and where this is the case we do not hesitate to say so. However, for this project, by utilizing resources and expertise not originally brought to bear, the Service was able to offer a means of resolving the problem that provides for the survival of the snake and the human need for additional water resources. Our ability to do this, within the provisions of the Endangered Species Act, is essential to avoiding destruction conflicts between human and wildlife needs. This is clearly in the interests of both.

I am submitting for the record a copy of our December 19, 1986, biological opinion on the Stacy Dam and Reservoir.

To address further long-term means by which potential conflicts may be resolved in the Colorado system, the Service has established the Colorado

River Coordinating Committee. This group consists of representatives of the States of Wyoming, Colorado, and Utah, the Bureau of Reclamation, the Fish and Wildlife Service, and water development and conservation groups. The Committee is seeking various approaches that will enable project development to comply with the Endangered Species Act while both maintaining interstate compact agreements and other water rights under State law.

During FY 1986, the Fish and Wildlife Service participated in 10,925 consultations, all but 421 of them informal. Of the 421 formal consultations, 369 resulted in "no jeopardy" biological opinions, and "reasonable and prudent alternatives" for avoiding jeopardy were provided for the great majority of others.

Another change mandated by the 1982 amendments to the Endangered Species Act was a significant streamlining of the Section 7 exemption process, by which a cabinet-level committee may grant an exemption from a Secretarial determination under Section 7 that an agency action will violate Section 7(a)(2) of the Act. Regulations implementing these procedural changes were published on February 28, 1985.

For those actions or projects that do involve Federal agencies, protection for listed species and their habitats can sometimes be gained through a habitat conservation plan and the granting of a Section 10 permit. The 1982 amendments added a provision to Section 10 allowing the issuance of a permit for taking of an endangered species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Prior to the 1982 amendments, a permit to take an endangered species could be issued only for scientific purposes or to enhance the propagation or survival of the species.

In order to obtain such a permit, the applicant must submit a habitat conservation plan that promotes the long-term conservation of the species in the wild. The plan must include steps that will be taken to minimize and mitigate the impacts the action will likely have on listed species and their habitats, along with assurances that adequate funding for the plan will be provided. Such plans have been written to conserve the unique flora and fauna of San Bruno Mountain in California and the Coachella Valley fringe-toed lizard in southern California's Mojave Desert. Also, a conservation plan for the development of a small tract on Key Largo, Florida has resulted in the issuance of an incidental take permit. Other plans are actively being worked on or considered, including an extensive plan on North Key Largo, and a plan in southern California designed to provide for the endangered least Bell's viero.

INTERNATIONAL CONSERVATION EFFORTS

Since wildlife does not respect national boundaries, the maintenance of biological diversity is a matter of international concern. The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, usually referred to as the Western Hemisphere Convention, seeks to conserve our region's native flora and fauna, including migratory birds, in the

face of widespread habitat loss and environmental degradation. Nearly all of the countries in our hemisphere now are signatories to the Convention. We have initiated a number of important projects to further the purpose of the Western Hemisphere Convention, with an empnasis on the training of local managers. For example, 150 Latin American biologists from 20 countries have been able to attend U.S.-sponsored workshops on management of refuges, migratory birds, crocodilians, management planning, environmental education, and research techniques. The heads of most Latin American wildlife agencies have participated in these workshops. Perhaps our most important accomplishment has been the establishment of Latin America's first graduate level training program in wildlife management. This university program is located in Costa Rica and will serve the Central America region. This is its first year of operation. There are 12 students from 9 countries. World Wildlife Fund-U.S. and the Government of Costa Rica are cooperators in this much needed activity. In the future we hope to replicate this program in Spanish speaking South America and in Brazil. In terms of cost effectiveness, the education of 12 students in Costa Rica is cheaper than that for 3 students in the U.S. with no significant loss in quality.

In addition to our activities in the Western Hemisphere, the Fish and Wildlife Service has taken advantage of the foreign currency authority in section 8 to implement a number of wildlife and habitat management, research, and training activities of benefit to threatened and endangered species in India, Egypt, and Pakistan. As these countries elevate their priorities for the maintenance of their living resources, we have been

able to provide extensive assistance and support without an expenditure of U.S. dollars. We assisted with initial planning for establishment of the first protected area in Egypt. Feedback and support from our Embassy on this project has been outstanding. Although we have employed in excess of $4 million in foreign currencies over the history of this activity, it has not been a burden upon the Service because we work through private groups, foundations, universities, and research institutions to carry out our objectives.

Using foreign currencies, we have embarked on a major project in India. The Government of India has, as a very high priority, established a Wildlife Institute where all wildlife managers and researchers will be trained. The Service is working with the Institute in curriculum development, faculty training and development, and with a visiting professor and guest lecturer activity. This is an opportunity to greatly influence, without U.S. dollar costs, resource conservation in India while that country is still rich in diversity, numerous U.S. universities and private institutions are helping us in this effort.

During the last year the United States became a party to the Convention on Wetlands of International Importance. That action was taken at the request of the Service. The Convention seeks to steer the progressive loss of wetlands globally and to work for the wise use of wetlands. The importance of wetlands, for their wide array of values and particularly as habitats for largest diversity of migratory birds in our Western Hemisphere have made us anxious to share our wetlands conservation knowledge

72-965 - 87 - 3

with others. This is an important complement to our many domestic wetland activities.

Also during the last year, we signed a cooperative agreement with the Peoples Republic of China in the field of nature conservation. This agreement will allow the Service, other resource management agencies and members of the private conservation community to carry out cooperative work in the research and recovery of threatened and endangered species, migratory bird management and research, marine mammal research and protected area conservation.

LAW ENFORCEMENT

The Service has continued to emphasize an aggressive law enforcement effort in protecting species listed under the Endangered Species Act as endangered and threatened and listed on the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). During 1986, the Service opened more than 3,000 cases under the Endangered Species Act, which implements CITES in the United States. These resulted in total criminal fines of $57,875 and 2,678 days in jail being imposed. Of these figures, $6,000 in fines and 1,095 days in jail were suspended. In addition, $33,275 in civil penalties was imposed. The following are summaries of some of the more significant enforcement actions under the Endangered Species Act in 1986.

In 1986, the Service received intelligence that one or more shipments of endangered thick-billed parrots had been smuggled into the United States. Subsequently, Special Agents in several parts of the country began receiving complaints that these parrots were being offered for sale. As a result of the Service's investigation, an Oregon resident was found guilty of the interstate sale of five thick-billed parrots, sentenced to a $5,000 fine, and placed on five years' probation. In Los Angeles, California, a husband and wife were sentenced to a total of $11,000 in fines and placed on three years' probation for attempting to sell six thick-billed parrots valued at $12,000 to Service Special Agents. Related cases are pending in other parts of the country, including one seizure that occurred in the Washington, D.C. area.

In Virginia, Service Special Agents investigated the deaths of five bald eagles. This investigation determined that all died as a result of poisoning from Carbofuran, a pesticide commonly used to protect corn and peanuts. The Environmental Protection Agency and various State agencies are now studying the potential hazards of Carbofuran, and the Fish and Wildlife Service has completed an endangered species consultation regarding species threatened by this chemical.

A total of 4,570 Geoffrey cat skins was seized in New York as part of an international investigation involving stolen Bolivian CITES permits. These furs had been illegally exported from Argentina to Paraguay and then to Bolivia, where the fraudulent documents were obtained. The furs were shipped from Bolivia to Israel and finally to the United States, where

seizure was made.

Following a two-year undercover investigation into the smuggling and the subsequent illegal sale of parrots in the United States, Service Special Agents arrested 23 defendants and seized 180 live birds on June 24, 1986, in Texas and New Mexico. Seven other defendants, including three major suppliers in Mexico, remain at large as fugitives. Agents documented illegal transactions involving more than 500 birds, valued on the retail market at almost a quarter of a million dollars and consisting mostly of CITES Appendix II species, although endangered thick-billed parrots and Appendix I scarlet macaws were also represented. To date 17 of the 30 people indicted have pleaded guilty to violating the Lacey Act, and fines assessed total $41,000. The Service's first covert investigation into cactus-smuggling for the commercial market has resulted in the forfeiture of more than 200 live plants and fines totalling $12,000 for six people who pleaded guilty to conspiracy and the illegal importation of "living rocks" cacti, listed on Appendix I of CITES and protected by the Endangered Species Act. Valued by hobbyists and traded internationally, the plants are considered amount the 10 most endangered inthe world and are found in the wild only in remote canyons of Mexico. The forfeited cacti include many unique specimens and have been donated to the University of California and other institutions including botannical gardens on the West Coast. Two venicles used to smuggle the plants have also been forfeited to the Government.

In Los Angeles, a major importer of parrots was sentenced to 60 days in jail, a $4,000 fine, and 300 hours of community service for violations of the Endangered Species Act and the felony provisions of the Lacey Act involving illegal trafficking in parrots. Seventy-eight parrots valued at $80,000 were seized.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions you or any of the other Committee members might have. I would also like to add at this time that we appreciate your continuing support for the Endangered Species Program, and we stand ready to assist in any way we can during the entire reauthorization process.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
WASHINGTON, D.C. 20240

ADDRESS ONLY THE DIRECTOR
FISH AND WILDLIFE SERVICE

JUL 10 1987

Senator George Mitchell
Chairman
Subcommittee on Environmental Protection
Senate Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are the Service's responses to the questions submitted by the Subcommittee for the record of the April 7 hearing on reauthorization of the Endangered Species Act. Also included is the analysis I promised you on the Service's ability to protect listed species of plants in the absence of amendments to the Act.

I will be pleased to provide any additional information the Subcommittee might require.

Sincerely,

Frank Dunkle

DIRECTOR

Enclosure

QUESTIONS FROM SENATOR MITCHELL

Pesticides

Question 1: On page 18 of your April 7, 1987, testimony concerning the reauthorization of the ESA, you reported that several bald eagles had been confirmed to have been killed by the corn and peanut pesticide, carbofuran. I understand that these eagles were killed during the last 2 years.

Does the FWS have a systematic monitoring program for identifying the impact of pesticide use on endangered species?

Answer: The Fish and Wildlife Service does not have the resources to monitor the effects of all registered pesticides on listed species nationwide. However, our Patuxent Wildlife Research Center, National Wildlife Health Laboratory, and Columbia National Fisheries Research Laboratory analyze many fish and wildlife specimens, including listed species, to determine the cause of death and levels of pesticide contamination.

Question 2: In a report to the EPA dated March 1983, the FWS rendered a biological opinion on the cluster of pesticides used on corn crops. At that time, carbofuran in both the granular and non-granular form was found to be likely to jeopardize listed species. Its use was considered to affect avian species, mammalian species, aquatic vertebrates and invertebrates, and reptiles. The pesticide is clearly among the more hazardous of all pesticides used on corn.

Your statement last week that the Federal effort on endangered species is now better coordinated seems to be disputed by the evidence of bald eagle kills from carbofuran, which occurred long after your opinion finding that the pesticide was likely to jeopardize endangered species.

How does the FWS ensure that the EPA is acting in accordance with the FWS's biological opinion?

Answer: The EPA has acknowledged that it has been slow in its implementation of reasonable and prudent alternatives provided by the FWS to preclude jeopardy to listed species. However, for more than 2 years the EPA has been diligently working on this extremely complex implementation process.

The Service has been coordinating with the EPA throughout this process and will continue to do so to ensure that pesticide use will not jeopardize the continued existence of any listed species.

Question 3: I understand the Colorado FWS office recently declared jeopardy to the bald eagle from carbofuran in portions of Colorado and Utah; the New Mexico FWS office declared jeopardy to the bald eagle throughout Texas; and the Georgia office declared jeopardy to the bald eagle in Arkansas, western Mississippi, and Louisiana. Furthermore, it is apparent from documented deaths that secondary carbofuran poisoning will cause mortality to bald eagles. Despite this, the FWS draft summary opinion not only failed to declare jeopardy to the bald eagle, but it limited its conservation recommendations to protection of bald eagles east of Interstate 95 in Virginia.

How do you explain these apparent inconsistencies?

Answer: Our Boston Regional Office has the lead on the current Section 7 consultation on the continued use of carbofuran. Other FWS Regions have submitted draft recommendations to Boston regarding concerns within each of their administrative areas.

The recommendations regarding jeopardy to the bald eagle to which you have referred were analyzed further and discussed with each of the affected Regions. Following this, the Boston Office concluded that a finding determining that the use of carbofuran would jeopardize the continued existence of bald eagles cannot be biologically supported. This species' status is improving throughout its range. However, because of two documented bald eagle deaths in eastern Virginia, the draft biological opinion recommends that granular carbofuran not be used in portions of the breeding range of the Chesapeake Bay bald eagle population.

Question 4: Last year EPA released a report, done under contract, that found that EPA's pesticide program had for many years been violating the ESA, and EPA repeatedly had ignored numerous FWS jeopardy opinions.

What do you do to monitor whether the recommendations in your opinions are being heeded? For example, in the case of your opinions finding that numerous pesticides, not just carbofuran, jeopardize the continued existence of several endangered species, were you aware that the EPA had not heeded those biological opinions, and did you do any follow-up?

Answer: In the final Section 7 regulations published jointly by the Fish and Wildlife Service and the National Marine Fisheries Service on June 3, 1986, there is a subsection (b) of Section 402.15 that states "If a jeopardy biological opinion is issued, the Federal agency shall notify the [appropriate] Service of its final decision on the action." This was specifically added to the final regulations so both Services would be aware of the reasonable and prudent alternatives the Federal agency would implement in order to avoid jeopardy to a listed species and/or adverse modification to critical habitat.

The Fish and Wildlife Service and the Environmental Protection Agency are coordinating closely to implement all reasonable and prudent alternatives to preclude jeopardy to listed species due to the continued registration of pesticides.

EPA advises that protection for endangered species found in jeopardy as a result of pesticide labeling consultations will be fully implemented by February, 1988. Labeling will formulated and adopted by EPA on an annual basis for other biological opinions received from the Service. A document entitled "Endangered Species and FIFRA: An Implementation Plan", prepared by the Ecological Effects Branch of EPA's Pesticide s Program, details the implementation strategy and actions necessary to implement the plan, and provides a timetable for outreach and education activities.

Plants

Question 1: If you are convinced that unscrupulous collecting of these plants on non-federal lands is likely to be so detrimental to them that you shouldn't designate critical habitat, yet hand out information on their location to anyone who makes a FOIA request, how can you maintain that the Act doesn't need to be amended to prohibit taking on non-federal lands?

Answer: Although over the years there have been numerous requests under the Freedom of Information Act (FOIA) for information on listed species, we have never received a request for information on the location of listed plants. We feel, however, that it is generally beneficial to collectable plant species to avoid specifying locations at the outset, such as with the publication of maps showing the boundaries of designated critical habitat. The taking of which the Service is aware on non-Federal lands has largely been the result of destruction that would not be addressed by a collecting prohibition.

We would note, however, that there does not seem to be any authority under which we could deny a FOIA request for the location of listed plants. Rather than extending Federal criminal penalties to purely intra-state activities such as theft of plants from private lands, the Committee might consider providing an exemption from the Freedom of Information Act for information on the location of listed species, or those under consideration for listing, such as those already provided for archeological and cultural site information (16 U.S.C. 470hh (a) and 470w-3).

Question 2. Please describe specifically how you would protect plants from taking on non-Federal lands through regulation in the absence of any amendment to the Act.

Answer. (This response covers the above question and my promise during the Subcommittee hearing to provide a comprehensive report on the Service's authority to protect plants, as provided in the amendment proposed by Mr. Bean, in the absence of such an amendment.)

There are three differing elements of the proposed amendment: to "remove, cut, dig up, or damage or destroy" listed plants on private lands in violation of the laws of any State, to do so in the course of trespass on private lands, and to "maliciously" destroy listed plants on Federal lands. The first element of the proposed amendment would potentially apply to landowners as well as others, while the second would apply only to persons engaged in illegal conduct under State trespass laws.

We believe it would be wise to more closely examine State laws before moving to make purely intra-state activities, particularly activities of landowners with respect to plants on their lands, subject to Federal criminal penalties. We would suggest the Committee fully examine the range of State protections for listed or rare plants, both to determine how well such laws are actually operating to protect plants, and to permit a policy judgment on the variations between the differing State protective systems. No other prohibition in the Act is subject to variations in State laws, and we believe the situation should be fully explored before any action is taken.

While the Service is aware of several instances of deliberate vandalism or collecting of listed plants on private lands, such as the vandalizing of the only known population of the Virginia round-leaf birch, most plant species are more seriously threatened by conversion of habitat or incompatible land management regimes than by collecting or vandalism. In addition, instances of vandalism are very difficult to verify. It is often difficult to distinguish damage caused by a human action from that caused by browsing or grazing, and the total destruction of listed plants may be indistinguishable from natural mortality. Such actions may not be detectable unless the affected plant population is being monitored down to the level of individual plants. We accordingly believe the usefulness of the proposed amendment as a conservation tool would be quite limited.

From an enforcement standpoint, the Lacey Act Amendments of 1981 provide a law enforcement tool against those who illegally take State-listed plants from State or private lands in violation of State laws designed to protect such plants from such activities, and who then engage in interstate commerce, transportation or receipt of such plants. The Endangered Species Act itself prohibits interstate commerce in Federally-listed plants. Since the majority of such illegal takings would appear to be for commercial purposes, we believe we have the necessary authority to act in these instances.

Existing law provides penalties for the "malicious destruction" of listed plants on Federal lands. There are laws and regulations applying to virtually all Federal lands which prohibit such actions.

As previously noted, detection of "malicious destruction" of listed plants is itself extremely difficult. Should vandals be apprehended, the following penalties would be applicable:

NATIONAL FOREST LANDS: 36 CFR 261.9(c) prohibits "damaging any plant that is classified as a threatened, endangered, sensitive, rare, or unique species"; 16 U.S.C. 551 provides a penalty of up to six months in prison, or a fine of up to $500, or both for any violation of the regulation. In addition, 18 U.S.C. 1853 provides a penalty of up to one year in prison, or a fine of up to $1,000, or both, for anyone who "unlawfully cuts or wantonly injures or destroys" any tree on any lands of the United States purchased or reserved for public use, or upon any Indian lands.

PUBLIC LANDS (BLM): 43 CFR 4140.1(b)(3) prohibits "cutting, burning, spraying, destroying or removing vegetation without authorization"; 43 U.S.C. 1733 provides a penalty of up to one year in prison, or a fine of up to $1,000, or both, for any violation of the regulation.

NATIONAL PARK LANDS: 36 CFR 2.1 prohibits, except where specifically permitted, "possessing, destroying, injuring, defacing, removing, digging, or disturbing from its natural state ... [any] plants or the parts or products thereof"; 16 U.S.C. 3 provides a penalty of up to six months in prison, or a fine of up to $500, or both, for any violation of the regulation.

NATIONAL WILDLIFE REFUGE SYSTEM LANDS: 50 CFR 27.51 prohibits (except where authorized) "disturbing, injuring, spearing, poisoning, destroying [or] collecting ... any plant"; 16 U.S.C. 668dd(e) provides a penalty of up to six months in prison, or a fine of up to $500, or both, for any violation of the regulation.

We therefore believe we have the necessary authority to pursue "malicious damage or destruction" of listed plants on Federal lands.

Gaps in our enforcement abilities for listed plants appear to exist in the areas of removal and reduction to possession from private lands while in the course of trespass, if the plants do not subsequently enter into interstate commerce, malicious destruction of listed plants on non-Federal lands, and destruction of listed plants by a landowner in violation of any State law. We do not believe these factors warrant an amendment at this time, for the reasons noted above.

Question 3: Please provide the number of all requests concerning listed plant species made under the Freedom of Information Act since 1982. Please also provide summaries of the information provided to the individual or organization who has made such a request.

Answer: This is interpreted to mean FOIA requests for plant location information. Although the Service has received many Freedom of Information Act (FOIA) requests related in various ways to endangered species over the years, we have found none that sought the location of listed plants. Many less formal requests from collectors or suspected collectors for location information have been received and deflected by staff in regional and field offices. No records of these incidents, which usually involved telephone calls or personal contacts, are available. Evidently, no one has been persistent enough or knowledgeable enough to follow up with a request under FOIA. If they had, however, we believe we would have had to furnish the information.

Question 4: During 1984 and 1985, APHIS and the Fish and Wildlife Service had a Memorandum of Understanding under which the Service investigated violations of the plant import and export provisions of the ESA. Can you explain why this agreement was discontinued? Will it be renewed?

Answer: This agreement was not renewed at the end of fiscal year 1985, and there are no plans to renew it. Service staff determined other program activities to be of higher priority.

Question 5: The Natural Resources Defense Council, in a statement submitted for the record, has suggested that the enforcement of the plant import and export provisions of the ESA could be improved if the responsibility were shared by APHIS and the FWS. What is your response to that proposal in view of the previous question?

Answer: As previously noted, the Service has other higher priority law enforcement activities. Accordingly, we believe such an amendment would not serve a useful conservation purpose at this time, and would urge that it not be adopted.

Western Water Development

Question 1: In my opening statement, I said that the GAO had provided an answer with regard to the effect of the Endangered Species Act on western water projects. The other related question which must be answered is whether the ESA has protected species from western water development.

Can you tell me, for instance, what has happened to the numbers and distributions of the three endangered fish in the Colorado River system since those three species were listed?

Answer: Bonytail Chub--This species is on the verge of extinction; it has been declining steadily over the last 10 years. The last documented record was taken in 1984. A population of old age-classes exists in Lake Mohave, but they are apparently not reproducing.

Humpback Chub--Only two stable populations remain. They occur in the Little Colorado River near the Grand Canyon and in the Black Rock and Westwater Canyons of the mainstream Colorado River. Populations in the Green and Yampa Rivers are declining.

Colorado Squawfish--Viable populations exist in the Green River. In the Upper Basin of the Colorado River, populations are slowly declining; densities being only 30 percent of those in the Green River. Fifty miles of the squawfish habitat in the White River has been destroyed due to the Taylor Draw Project. Operation of Flaming Gorge Dam has severely reduced recruitment in some years. No viable populations remain in the Lower Basin.

QUESTIONS OF SENATOR BOB GRAHAM FOR MR. FRANK DUNKLE,
DIRECTOR OF U.S. FISH AND WILDLIFE SERVICE,
REGARDING ENDANGERED SPECIES ACT

Question 1: To continue my line of questioning from the April 7 hearing on the Endangered Species Act— in finding that the construction of Interstate 75 in Florida posed a jeopardy to the Florida panther, negotiations for providing protected pathways for the panther resulted in no Federal funding to accomplish this alternative.

In my view, a "reasonable and prudent alternative" was not taken by the Federal Department of Transportation, nor was a "reasonable and prudent alternative" to protect the endangered panther adequately pressed in the consultative process.

What do you perceive as the gap in this process that allowed a Federal agency--in this case DOT--to go forward with a project determined to present a potential jeopardy to an endangered species, without implementing the full "reasonable and prudent alternatives" put forth by the Department of the Interior?

How do you suggest that we correct such a gap?

Do you believe that a legislative change in the Endangered Species Act is necessary to assure that Federal agencies employ the reasonable and prudent alternatives (which would not violate subsection (a)(2) of Section 1536 of the ESA) when a jeopardy finding exists in regard to an endangered species?

If so, what language do you suggest to accomplish such an amendment?

Answer: The jeopardy opinion issued to the Federal Highway Administration (FHWA) on February 25, 1985, included three reasonable and prudent alternatives to the construction of I-75 as originally proposed that would not jeopardize the continued existence of the Florida panther. The Fish and Wildlife Service was in close communication with both the Florida Game and Freshwater Fish Commission and the Florida Department of Transportation while developing the biological opinion and the reasonable and prudent alternatives. Following issuance of the biological opinion to FHWA and meetings among affected State and Federal agencies, the State of Florida agreed to accept one of the three proposed reasonable and prudent alternatives and to incorporate this alternative in project plans. After being assured by FHWA that the project had been modified to coincide with one of the proposed alternatives, the FWS amended the original biological opinion from jeopardy to no jeopardy.

The Section 7 consultation was based on consideration of a project plan submitted to the FWS by FHWA. The amended no jeopardy opinion was based on a modified project plan that was resubmitted by FHWA. The means by which it was determined, and how and in what proportions various funds would be applied to the total project was beyond the scope of the consultation process. As far as the FWS is concerned, there was no gap in the process. The I-75 project has not gone forward without a commitment to implement the full reasonable and prudent alternative that was put forth by the Department of the Interior.

It is important to note that the Endangered Species Act does not contain any requirments that the Federal agency involved in a consultation assume the burden of any costs which might result from implementation of the reasonable and prudent alternatives. Although agencies might do so, in cases where a third party is involved it is common practice for any such costs to be met by the applicant for the permit or funds involved in the consultation.

The Service feels that existing language in Section 7 of the Endangered Species Act is adequate to ensure that Federal agencies employ reasonable and prudent alternatives to a jeopardy or adverse modification biological opinion. Section 7(a)(2) states that Federal agencies shall "insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species...." If a Federal agency receives a jeopardy opinion it may adopt the reasonable and prudent alternatives as provided in Section 7(b)(3), or it may apply for an exemption under Section 7(h). (The ESA requires that if they can be developed, reasonable and prudent alternatives should be suggested as part of every jeopardy opinion.) Furthermore, although the Service's biological opinions are entitled to great deference, the Service recognizes that the Federal action agency has the ultimate responsibility to decide whether its action can proceed in light of the requirements of Section 7(a)(2). The Service believes that the current language of Section 7, as implemented by 50 C.F.R Part 402, provides sufficient procedural requirements for ensure compliance with the prohibitions in Section 7(a)(2).

QUESTIONS SUBMITTED BY MR. CHAFEE

Question: How do you respond to the charge that, at the current rate, it will take more than 20 years to list the approximately one thousand "candidate" species that are known to be headed for extinction?

Answer: Although under the current funding level it may take approximately 20 years to list these 1,000 or so candidate species, the Service believes it is carrying out an aggressive and effective listing program. Listing of candidate species is planned in accordance with the Service's established priority system, which is intended to direct resources preferentially to species in the greatest danger of extinction. Although a few candidate species have gone extinct while awaiting listing, these extinctions involved species whose status was so desperate when they came to the Service's attention that prompt listing would probably not have saved them. We believe that the Service's current program will continue to provide a consistent listing of candidate species, and, at the same time, prevent extinctions. We also believe that the program will continue to be responsive to those species faced with the greatest threat of extinction.

Question: Of the 167 recovery plans that have been approved since 1982, how many have been fully implemented?

No recovery plan has been fully implemented; however, at least one recovery action has been implemented for each of the species represented by the 167 approved recovery plans. In this regard, all of the 167 approved plans since 1982 have been at least partially implemented.

It must be noted that recovery plans contain the suggestions of knowledgable professionals for virtually everything that might contribute to the recovery of the species in question. Not all elements of any plan are of equal priority, and even given a vastly greater amount of resources for implementing recovery plans, it is highly unlikely that the Service would seek to implement every recommendation in any recovery plan. "Full implementation" is therefore not a realistic standard for evaluating the Service's recovery activities. We believe we are making prudent use of available recovery resources, and as noted in testimony before the Subcommittee, significant progress is occurring in many areas.

Question: Are you familiar with the Office of Technology Assessment's (OTA) recent report on biological diversity?

Do you agree with the report's conclusion that the U.S. does not have a coordinated program for addressing the decline in biological diversity?

What about the report's recommendations?

Answer: With regard to the OTA report, the Service has distributed copies of this report to its various divisions and offices. However, neither the Service nor the Department has taken any position on its conclusions and recommendations.

We believe that the Service's endangered species program is an extremely important mechanism in protecting biological diversity. Generally, the first species that are lost within an ecosystem are those that are restricted to fragile or easily-altered habitat components (micro-habitats). Most of these species are on the Service's candidate species lists (unless there are no known threats to the species or its habitat, in which case the species may not be on a candidate list). Because a species is on a candidate list, the species' status is monitored more closely than others. When the habitat of such fragile species has been altered or threatened with destruction, the Service has aggressively sought protection of these species and the ecosystems upon which they depend under the Endangered Species Act. By protecting the fragile components of various ecosystems, many other species and habitat components are also protected. We believe that the Service's endangered species program has and will continue to reduce the loss of biological diversity.

Testimony of
William E. Evans
Assistant Administrator for Fisheries
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

Before the

Subcommittee on Environmental Protection
Committee on Environment and Public Works

United States Senate

April 7, 1987

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to inform you of the activities of the Department of Commerce under the Endangered Species Act of 1973 and to offer our views on its reauthorization. This Act is vital to the conservation of species of fish, wildlife and plants that are endangered or threatened with extinction.

The authorizations for appropriations under Section 15 of the Act have expired and should be reauthorized to provide essential legislative support for continuation of important conservation programs. The Department of Commerce recommends authorization of appropriations at a level of $2,275,000 for fiscal year 1988 and such sums as necessary for fiscal years 1989 through 1991.

Over the past years, a number of amendments to the Act have been made to allow adequate flexibility for resolving conflicts while preserving the original intent of the Act--species

conservation. Although the Act continues to be the subject of controversy and discussion, it is, for the most part, accomplishing its purpose.

The National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration (NOAA) is charged with conserving, protecting, and managing marine species of fish, turtles, seals, porpoises, and whales which are listed as threatened or endangered. Our efforts are focused on three major program areas--listing, recovery and consultation. I would now like to discuss our progress in these areas.

LISTINGS

The listing process is the critical step in implementing the provisions of the Endangered Species Act because it sets in motion consultation and recovery. The Act allows interested persons to petition to add or remove species from the list of endangered and threatened species. If the petition presents substantial information indicating that the proposed action may be warranted, the agency reviews the status of the species to determine whether a change in listing should be made.

In December 1986, NMFS received a petition to list the Chinese river dolphin as an endangered species. The petition contained substantial information and we have initiated a review of the status of this species to determine whether it should be listed. A decision will be made by December.

Last November we participated in a workshop on the biology and conservation of river dolphins held in China. From the information presented at this workshop, we believe that other river dolphins also may warrant listing under the Act. Therefore, we are reviewing the status of the Ganges River, the Indus River, the Amazon River and the LaPlata River dolphins.

RECOVERY

The ultimate goal of all activities under the Act is to restore listed species and populations to the point where protective measures are no longer necessary for the species to be a self-sustaining part of its ecosystem. Some species are in such critical condition that the immediate goal may be to prevent their extinction.

Development of Recovery Plans

Recovery efforts must not only involve NMFS and the U.S. Fish and Wildlife Service, but must include a coordinated effort by other Federal agencies, State and local governments, private industry, and environmental organizations. The development and implementation of a recovery plan provides a means to combine the programs and expertise of these Federal, State, local and private organizations and individuals into effective and efficient recovery efforts. These efforts should improve the status of the species and eventually lead to delisting. In addition to the recovery plans developed for sea turtles and the Hawaiian monk seal, NMFS is developing national recovery plans for the humpback

whale and right whale. I will be appointing recovery teams for these species to provide technical advice and recommendations concerning the plan and its priorities and to assist in implementation.

IMPLEMENTATION OF RECOVERY PLANS

Hawaiian Monk Seal

The recovery plan for the Hawaiian monk seal identifies problems and limiting factors contributing to the status of the species, identifies information needs, and recommends recovery actions that NMFS and other agencies and organizations can undertake. We are taking several actions under this plan. For example, we are working with the U.S. Fish and Wildlife Service, the Department of the Navy, and the U.S. Coast Guard to control human activity in the vicinity of monk seal habitat in an effort to reduce disturbance of the seals. As part of our head-start program at Kure Atoll we are temporarily maintaining female pups, which has increased their first year survival rate from 10 to 90 percent. Similar initiatives soon will be undertaken for adult female seals.

Critical habitat for this species has been designated and we are expanding our habitat use studies. This year we will study monk seal foraging behavior at French Frigate Shoals, the only location where the monk seal population appears to be limited by the availability of food. This and other available information and the advice from the recovery team will be evaluated to

determine if additional measures are required for the conservation of this species. Although census data from the past four to six years have indicated that throughout the Northwest Hawaiian Islands the total number of seals has stabilized, there is insufficient information to determine if this trend will continue.

Sea Turtles

When the green and loggerhead sea turtles were listed in 1978, the incidental take of these species in shrimp trawls was identified as a problem. The recovery plan for sea turtles identifies this incidental take as a major source of mortality for these species as well as the endangered Kemp's ridley turtle.

We estimate that more than 11,000 endangered and threatened sea turtles die in shrimp trawls each year. In 1981 NMFS developed gear, known as the TED, that reduced the incidental catch of sea turtles in shrimp trawls by 97 per cent. As far as we can tell this gear does not reduce the shrimp catch. Since that time we have been encouraging shrimpers to voluntarily use the TED. Our efforts have not been successful. Of the more than 15,000 shrimp trawlers, at most 300-400 are using TEDs.

At a meeting with representatives of the shrimp industry and the environmental community in August 1986, Under Secretary Calio presented a draft proposed rule that would require the use of TEDs in selected areas. Representatives of both sides expressed concern over this proposal and a desire to seek an

alternative solution for conserving sea turtles. The Under Secretary invited these groups to develop a solution that would be supported by both industry and the environmental community and would allow NMFS to meet its responsibility under the Act.

After a series of meetings an agreement on an alternative solution was reached. We believe that this proposed solution will provide adequate protection for sea turtles and yet not have significant adverse economic effects to the shrimp industry. The agreement calls for a three-phased approach to require shrimp trawlers to use TEDs in the most critical sea turtle areas of the U.S. Gulf of Mexico and the U.S. South Atlantic. These requirements would begin in certain areas July 15, 1987, provided sufficient TEDs are available, and will be expanded through 1990. At that time the effectiveness of the regulations will be reviewed. Additional steps then may be taken to require that TEDs be used during at least 80% of the shrimping effort in the southeast U.S.

Recently NMFS published a proposed rule based on this agreement. As part of the rulemaking process, we conducted a series of public hearings in North Carolina, South Carolina, Georgia, Florida, Mississippi, Alabama, Texas, Louisiana and Washington D.C. I have provided for the record a copy of the agreement reached between the shrimping industry and the environmental community, the Draft Supplement to the Final Environmental Impact Statement and the proposed rule.

7

CONSULTATION

Section 7 of the Act requires all Federal agencies, in consultation with the Secretaries of the Interior and Commerce, to insure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the critical habitat of such species.

Federal agency authority and responsibility under Section 7 have remained intact from the 1973 Act, however, amendments to the Act have modified the consultation requirements. Many of these changes were designed to improve interagency cooperation by streamlining the consultation process. In June 1986, regulations implementing these changes were published jointly with the U.S. Fish and Wildlife Service. A seminar was conducted in Washington, D.C. in March to familiarize Federal agencies with the changes in the Section 7 consultation process. Similar seminars are being conducted in our Regional Offices.

The consultation process has worked well for Federal actions affecting listed marine species. The NMFS has encouraged Federal agencies to initiate consultation during the planning stages of their activities. This approach has allowed us to assist Federal agencies in planning their activities to avoid adverse impacts to listed species. As a result, the majority of the consultations are conducted informally and do not require preparation of biological opinions.

3

FUTURE ACTIVITIES

Enhanced Cooperative Programs with Coastal States

Most of the species under the NMFS's jurisdiction have broad geographic ranges spanning several States. We soon will be exploring with coastal States their interest in developing cooperative management plans and programs for endangered and threatened marine species. I believe that such agreements would greatly enhance recovery efforts for species using coastal habitats.

Guidelines for Recovery Efforts

We will be developing guidelines to focus the NMFS' recovery resources in areas of greatest need and where maximum benefits will be derived for listed species under our jurisdiction.

Marine Species Reviews

The NMFS will develop a mechanism to systematically review marine species that may warrant listing under the Act.

Incidental Take of Listed Marine Mammals

In November 1986, the Marine Mammal Protection Act and Endangered Species Act were amended to provide for the take of listed marine mammals incidental to authorized activities other than commercial fishing. We are working with the Fish and Wildlife Service to develop regulations implementing this amendment.

TECHNICAL AMENDMENT

Under the 1982 Amendments to the Act, permits can be issued to allow taking endangered species incidental to otherwise lawful activities provided that a conservation plan is implemented. Due to what I believe was an oversight in the 1982 Amendments, these permits can be issued to cover only activities within the U.S. or its territorial sea, and not for activities outside the 3-mile limit. We therefore ask for your clarification and, if appropriate, a technical amendment to provide authority for issuing incidental take permits within the U.S. Exclusive Economic Zone. This would assist in our efforts to collect data on the incidental taking of sea turtles associated with fishing and other activities, which now are not reported.

SUMMARY

As I stated earlier, the Act has been amended to provide the flexibility to adequately resolve conflicts between listed marine species and various marine user groups. Now we need to put our heads and efforts together to make it work for everyone.

Other than the technical change just mentioned, I believe that no amendments are required at this time. I will be pleased to answer any questions you have.

International Association of Fish and Wildlife Agencies

STREET LOCATION: 1325 Massachusetts Av., N.W. (202) 639-8200
MAILING ADDRESS: 1412 16th St., N.W., Washington, D.C. 20036

Jack H. Berryman, Executive Vice President

STATEMENT OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES
ON THE REAUTHORIZATION OF THE ENDANGERED SPECIES ACT (S. 675)
BEFORE THE SENATE ENVIRONMENTAL POLLUTION SUBCOMMITTEE
GORDON C. ROBERTSON, LEGISLATIVE COUNSEL
APRIL 7, 1987

The International Association of Fish and Wildlife Agencies, founded in 1902, is a quasi-governmental organization of public agencies charged with the protection and management of North America's fish and wildlife resources. The Association's governmental members include the fish and wildlife agencies of the states, provinces and federal governments of the U.S., Canada and Mexico. All 50 states are members. The Association has been a key organization in the promotion of the principles of sound resource management and the strengthening of federal, state and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest.

The Association has consistently supported the Endangered Species Act and its underlying objectives. We supported its enactment and over the years have worked for needed revisions to improve administration of the Act for improved protection of fish and wildlife resources.

The Association supports reauthorization for 3 years and requests that the authority for funding with states under Section 6 be increased from the current $6 million to $12 million for FY 1988, $13 million for FY 1989 and $14 million for FY 1990. The 3 year reauthorization allows for adequate planning, but also provides the opportunity for additional adjustments that may be needed.

When the Act passed in 1973, the Federal Government agreed to enter into a grant program with the states. The reason for the grant program was that Congress in the Act called on the states to mount more intense programs to conserve threatened and endangered species. Recent annual appropriation history has been in the $4 million range, far below the estimated needs indicated by our state members. The Association is pleased to see the higher reauthorization levels in S. 675. The commitment by state fish and wildlife agencies is stronger than ever. Forty-six states and 3 territories now have cooperative agreements with the U.S. Fish and Wildlife Service for endangered species activities. Grant monies have been extremely important to state threatened and endangered species programs. From FY 1977 through FY 1986, over $36.7 million dollars has been allocated by the federal government for matching by the states. In the one year the grants were eliminated (FY 82), only 50% of the participating states were able to remain in the program and those did so on carryover funds.

There are other aspects of the Act that need attention. The Association is recommending the following:

Problems arise from two decisions of the Eighth Circuit Court of Appeals. In January 1985 the Eighth Circuit held that Indians with reserved hunting rights under treaties could kill endangered species (in this instance bald eagles) for non-commercial purposes without penalty on reservation land. The effect of that decision is that, at least in the Eighth Circuit, the general Indian hunting right takes precedence over the taking prohibitions of the federal Endangered Species Act. In June 1986 the U.S. Supreme Court reversed the case by holding the Bald Eagle Act applicable to such conduct but failed to address the applicability of the Endangered Species Act, thus the Eighth Circuit decision on that aspect stands. This decision could have harmful results if the remaining population of a species is small, occurs on Indian lands, and is not covered by the Bald Eagle Act.

In February of 1985 the same Circuit ruled against taking of wolves in specified areas of Minnesota, a program recommended by the Eastern Timber Wolf Recovery Team. That decision sharply restricts the discretionary authority of the Secretary of the Interior and that of the states for regulated taking of threatened species. It held that there could be no taking of threatened species for conservation purposes except in extraordinary conditions to relieve population pressure and virtually no taking of endangered species. Prior to this ruling, the Secretary of the Interior could authorize the taking of endangered species in extraordinary cases and could authorize taking of threatened species in a variety of circumstances. Indeed, the 1973 House Report stated, "Once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with respect to the permitted activities for those species" (House Report #93-412,12). The Circuit ruling negates Congressional intention. Our immediate concern is the implication of this ruling for preservation of threatened species over the longer term.

The Association believes strongly that regulated taking of individual animals may sometimes be necessary to the long-term survival of a threatened species. The decision in the Minnesota case misconstrues the provisions for differing levels of protection afforded endangered and threatened species under the statute. This alters the integrity of the Act. Unless reversed, its effect will impact other areas of the Act and impair the future effectiveness of the program. For these reasons we recommend that the Eighth Circuit decision in the wolf case be legislatively overruled. In addition, we recommend amending the Act to maintain the integrity of state programs and the federal program with regards to Indian utilization of endangered species. The Association is prepared to work with the Subcommittee to draft language addressing the question of Indians taking endangered species on reservation lands.

STATEMENT OF

ENVIRONMENTAL DEFENSE FUND
WORLD WILDLIFE FUND-U.S.
NATIONAL AUDUBON SOCIETY
NATURAL RESOURCES DEFENSE COUNCIL
THE WILDERNESS SOCIETY
ASSOCIATION OF SYSTEMATICS COLLECTIONS
AMERICAN CETACEAN SOCIETY
CENTER FOR ENVIRONMENTAL EDUCATION
GREENPEACE USA
HUMANE SOCIETY OF THE UNITED STATES
ANIMAL PROTECTION INSTITUTE
FUND FOR ANIMALS
INTERNATIONAL FUND FOR ANIMAL WELFARE
INTERNATIONAL WILDLIFE COALITION and
INTERNATIONAL PRIMATE PROTECTION LEAGUE

BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

CONCERNING
THE REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

April 7, 1987

Presented By
Michael J. Bean
Environmental Defense Fund

72-965 - 87 - 4

Introduction: The Need for a Vigorous Endangered Species Program

This committee has heard many times before about the urgency of the problem of endangered wildlife and the importance of a vigorous program to rescue our wildlife from the threat of extinction. The refrain about the role of often obscure species in discoveries of major value to medicine, agriculture, industry and science has been repeated so often by so many distinguished scientists in this very room that one could scarcely add more today.

There is, however, much that is new in the five years since Congress last reauthorized the Endangered Species Act, some of it encouraging and some of it deeply discouraging. Five years is hardly the blink of an eye in the evolutionary life of most species. Yet, that short period has witnessed the following. A continued decline in the wild population of California condors necessitated a last-ditch effort to bring the few remaining wild birds into captivity for an uncertain effort at captive breeding. Today, only one wild bird remains; when it is captured, the condor will be extinct in the wild. A similarly dramatic decline in the only known population of black-footed ferrets led to a similar emergency rescue of the handful of surviving ferrets for a still unsuccessful captive breeding effort. One ferret

apparently eluded the captors; when it passes from the wild, so too will the species. The Guam rail, a flightless bird on our island of Guam, met the same fate. It too has gone extinct in the wild in the space of the past half decade. For the Palos Verdes blue butterfly in California and the Amistad gambusia fish of Arizona, not even the faint hope of captive breeding can sustain them; the last known populations of these inconspicuous creatures were lost only a few years ago; they are now extinct. The Kemp's ridley sea turtle, whose nesting population had already been reduced some 99 percent since the late 1940's, continued its steady slide toward extinction as the remnant nesting population declined still further and American shrimp trawlers took a heavy toll of the immature turtles that are the only hope for rebuilding that nesting population.

These are a few dramatic examples representing thousands of other, less well known, species from the same endangered habitats. The more obscure species are precisely the ones most likely to have unrecognized economic importance. For example, the loss of major free-flowing rivers has threatened dozens of species, including many endemic American freshwater mussels whose shells are exported to Japan for the button industry.

The list of major setbacks we have suffered in the past five years could go on, but to do so might obscure the more important lesson from that same period -- that the road to extinction can

be reversed. The bald eagle and peregrine falcon continued their steady recoveries throughout this period. So too the brown pelican, which in the southeastern United States has been removed from the Act's protected list. The wintering flock of whooping cranes in Texas surpassed 100 this year for the first time since early in the century. The current population of Aleutian Canada geese may also be at a new high since its listing. The red wolf, once extinct in the wild, is about to be reintroduced. New populations of other species, among them the Gila trout and thick-billed parrot, have been established. The alligator has substantially recovered, not just in Louisiana and Florida, but throughout its range. These and other success stories demonstrate that, with a vigorous endangered species program, it is within our power to bring about positive results. The setbacks, on the other hand, demonstrate that the present program with the present level of resources is not enough. The remainder of this testimony addresses what more is needed.

Enlisting the Cooperation of the States through Section 6: A Key to Recovery

When Congress passed the Endangered Species Act in 1973, it declared that encouraging the states, through federal financial assistance, to develop and maintain conservation programs for endangered species was "a key to meeting the Nation's international commitments and to better safeguarding ... the Nation's heritage in fish, wildlife, and plants." The

development of cooperative programs at the state level remains a key to the success of this Act today. Many of the Act's success stories have come about as a result of cooperative state and federal endeavors made possible by the sharing of costs under Section 6 of the Act. To be eligible to participate in the Section 6 program, just about every state has entered into a cooperative agreement with the Fish and Wildlife Service; about half have both an animal agreement and a plant agreement.

If the Act's success stories are still limited, however, a large part of the explanation is that the Section 6 program has also been quite limited. The sums made available for carrying the federal share of worthy conservation projects have been neither great nor predictable. As the number of states eligible to participate in the Section 6 program has increased, and as the number of listed species that might benefit from that program has also increased, the sums made available under Section 6 have rarely even held constant. The Section 6 pie is so small, and being sliced in so many pieces, that many states -- and fully two-thirds of all listed species in the United States -- currently receive not a cent of benefit from it. The amount of money currently appropriated for matching grants to the states under Section 6 is roughly the same as it was in 1977. Yet, there are four times as many state cooperative agreements eligible for Section 6 support today as there were in 1977 and twice as many listed species.

The inadequacies of the current level of the Section 6 program are evident from a consideration of the situation in virtually every state, as the following examples indicate:

Florida -- In fiscal year 1986, the federal government was unable to furnish the matching financial support requested of it for worthy conservation projects developed by Florida. In fact, though more than 40 listed species occur in Florida, only eight of these benefitted from Section 6 expenditures in 1986. The total amount of Section 6 funding available to Florida in 1986 (half of which went for only one species, the Florida panther) was only about two-thirds the level of support in 1980 and 1981, when far fewer Florida species were listed.

Maine -- In the ten years that Maine has participated in the Section 6 program, it has received an average of less than $30,000 in Section 6 support.

Minnesota -- During the period 1984-1986, the federal government has been able to furnish only about a third of the matching financial support requested of it for worthy conservation projects developed by the State of Minnesota. During this period, the federal government's ability to uphold its end of the bargain has declined steadily, both in absolute terms and in terms of its share of identified needs; In 1984, it

was able to furnish nearly half the support requested of it, in 1985 a third and in 1986 only a fifth.

New Jersey -- Since 1982, the federal government's support of New Jersey's endangered species program through Section 6 has averaged only $10,000 per year. In fiscal year 1978, by contrast, over $700,000 in Section 6 money was made available to New Jersey. The $10,000 made available last year provided nominal support for only two of the state's eight listed species.

New York -- Since 1981, the federal government's support of New York's endangered species program through Section 6 has dropped dramatically. The $36,000 made available to New York last year represented less than a tenth of the amount annually made available to New York during the period 1978 through 1981. Prominent endangered species in New York, like the bald eagle and the peregrine falcon, did not receive any benefit at all from the drastically reduced levels of Section 6 support last year.

Rhode Island -- In the last five years the State of Rhode Island has received a total of only $14,200, two thirds the amount it received in fiscal year 1981 alone. Last year Rhode Island received less than a third of the Section 6 support it requested.

South Dakota -- During the past five years, the State of South Dakota has received an average of only $6,000 per year in Section 6 funds, less than a sixth of the amount it received annually during the previous five years.

There is an even more insidious problem in the Section 6 program than that of unmet, or inadequately met, needs. The level of federal support for Section 6 has been not only small, but entirely unpredictable. The uncertainty whether any money at all will be available for a state's projects in a given year, and the sure recognition that any sums that are available will be small, have continued to turn an increasing number of states away from the Section 6 program altogether. More and more, states are coming to the view that it is not worth their effort to apply for Section 6 funds; the sums involved are too small and the chances of getting them too slight.

The recovery of most endangered species will require a sustained effort over many years. Yet, the sums appropriated under Section 6 have been such a roller-coaster that long-term projects have been effectively discouraged. Some states initially hired staff for such projects, only to have the federal rug pulled from under them, a risk they are now reluctant to run again. It is hardly surprising that state agencies are becoming increasingly reluctant to seek the small and uncertain sums available under section 6. The same state agencies have

guaranteed shares under the Pittman-Robertson, Dingell-Johnson, and Wallop-Breaux programs of nearly $300 million in federal receipts for game and sport fish conservation. As these state-grant programs have bulged, the Section 6 program has become less and less consequential.

The remedies to this situation are two. The first is to increase substantially the level of funding for the Section 6 program. Currently unmet needs justify an immediate increase in the authorization level to $15 million (still only about 5% of the level of federal grants for game and sport fish conservation). By the fifth year of the proposed reauthorization period, a $25 million authorization level will likely be needed to keep pace with additional species listings and the expanded state programs that the immediate increase will bring about.

The second key to remedying the deficiencies of the Section 6 program is to put its funding on a secure, predictable basis. The success of the Pittman-Robertson, Dingell-Johnson, and Wallop-Breaux programs is owed to their independence from the roller-coaster ride of annual appropriations. We suggest that the Section 6 program be given a measure of the same independence by earmarking certain related federal revenues exclusively for it. Candidates for such earmarking might include duties on certain imported products, penalties recovered under various federal environmental laws, and possible excise taxes on certain

products often associated with the enjoyment of wildlife. We will develop a specific proposal of this sort. For now, we want only to persuade the committee of the essentiality of this approach and offer to it our assistance in refining the idea.

Improved Protection for Candidate Species: Avoiding the Need for Costly, Controversial Measures in the Future

Since 1980, the Fish and Wildlife Service has systematically inventoried plants, vertebrates, and invertebrates in the United States to determine which of them appear to warrant listing as threatened or endangered species. Those for which the Service already has in hand sufficient information to warrant a formal listing proposal -- the so-called "category I candidate species" -- currently number about 960. The Service does not currently have the personnel and other resources to carry out the required listing procedures -- federal register notices, newspaper notices, local hearings, etc. -- for that number of species. Indeed, at the present level of resources available for listing species, the Service manages to complete only about 50 listings annually. Thus, absent some increase in those resources, final listing decisions for the existing backlog of already eligible species will not be completed until well into the next century. Until these species are listed, however, they receive no legal protection under the Endangered Species Act.

This situation creates two serious problems. Most obvious is the risk that some of these species whose conservation might be assured through the protections afforded by the Act will instead be lost before receiving any protection at all. This is not just a hypothetical possibility; it has already occurred. Several species have gone extinct after being identified as candidates for future listing but before that listing actually happened. Others may follow if steps to achieve some level of "interim" protection for candidate species are not taken.

The less obvious risk is also serious. It is that many of these candidate species are likely to undergo a further substantial decline in numbers or distribution before they are listed. The list of examples of this character is already quite long and growing. The significance of this fact is that by the time a candidate species is actually listed under the Act, the options for securing its conservation are likely to have been severely narrowed. Relatively inexpensive, non-controversial recovery options that may have been available when the species was more numerous or widespread may no longer be available. Costly, controversial, and high-risk measures may be all that remain. This is surely a compelling response to the suggestion sometimes made that the government should stop adding species to the threatened and endangered lists until it first succeeds with the recovery of those already listed.

We offer three suggestions to remedy this situation. First, this subcommittee should insist that the Service embrace the very modest goal of making final listing decisions on all of the current Category I candidate species by the end of the century. Accomplishing that goal will require an approximate doubling of the current pace of species listings and a corresponding increase in the resources available for the Service's listing effort.

Second, the subcommittee should again seek to amend the Act to require that the Secretary monitor the status of candidate species to ensure that no significant risk to their well being occurs while they are candidates for listing. The House approved such a provision without controversy in the last Congress (section 1(a) of H.R. 1027). The record of candidate species extinctions and severe depletions is compelling evidence that the existing level of effort to stay abreast of what is happening to candidate species while they remain candidates is inadequate.

Third, other federal agencies must make more effective use of their authorities to assist in the monitoring and protection of candidate species. A major share of the currently identified candidates occur on federally managed lands, particularly those of the Forest Service and the Bureau of Land Management. BLM's authority to designate "areas of critical environmental concern" is ideally suited to protect occurrences

of both listed and candidate species, yet with the exception of the California desert and the state of Oregon, that authority has been only sparingly used for such purposes. Similarly, the Forest Service could make expanded use of its authority to designate special management areas in order to protect candidate and listed species. Both agencies could, and should, integrate candidate species monitoring measures into their periodic wilderness study area inspection programs. Other agencies could also implement their authorities in ways that would more effectively serve the goal of protecting candidate species without sacrificing primary agency missions. For example, the National Park Service's "national natural landmark program" could serve as a very effective device for monitoring and protecting candidate species that occur on non-federal lands. Wetland-dependent candidate species could be protected through EPA's program to identify in advance special aquatic sites inappropriate for filling under Section 404 of the Clean Water Act. If the Fish and Wildlife Service is given a clear statutory directive to establish a program to monitor the status of candidate species, it will be given the necessary nudge to pursue these and other mechanisms for inter-agency cooperation.

Plants: Protection on Non-Federal Lands Needed

About a third of the currently listed endangered and threatened species in the United States are plants. This

fraction is almost certain to grow, since the great majority of the candidates for future listing are plants. There is increasing evidence, however, that the limited protection the Act affords to listed plants is insufficient. We propose two carefully focused amendments to increase that protection.

Currently, anyone who captures, kills, or otherwise harms an endangered or threatened animal commits a violation of the Act for which substantial criminal and civil penalties may be imposed. By contrast, anyone can pick, dig up, cut, or destroy a threatened or endangered plant with impunity unless the offense is committed on federal land -- and even then there is no violation of the Act unless the plant is removed from the area of federal jurisdiction. Protection from unscrupulous collectors is simply non-existent anywhere other than on federal lands.

The limited reach of the Endangered Species Act for plants is troublesome precisely because few listed plants occur only on federal lands. Indeed, 59 of the 69 plant species listed since early 1985 occur, in whole or in part, on non-federal lands; about half of the 28 plants currently proposed for addition to the threatened and endangered lists occur only on non-federal land. Many of these plants occur on lands acquired by non-profit conservation organizations, like the Nature Conservancy, in order to protect the plants. Yet, generally ineffective state trespass laws are often the only deterrent against vandals and

unscrupulous collectors plundering the unique biological assets that give these lands their conservation value.

We propose a limited, carefully focused amendment to remedy this situation. That amendment would make it an offense under the Act to remove, cut, dig up, or destroy any endangered plant on any non-federal land area where that activity violates the laws or regulations of any state or where it is committed in the course of a trespass on the area. Our amendment would not change in the slightest any existing legal duty, for we would only make punishable under the Act what is already illegal under state law. The practical effect of our amendment, however, would be to provide a much more effective deterrent to such illegal acts, because the penalties authorized by the Endangered Species Act are more severe than those typically authorized by state trespass or other laws.

Our amendment would also slightly broaden the existing prohibition with respect to plants on federal lands by prohibiting the malicious destruction --i.e., willful vandalism -- of endangered plants on federal lands. While it may seem inconceivable that anyone would direct an act of senseless vandalism against an endangered plant, there have been apparent instances of exactly that, including the apparent cutting of a number of Virginia round-leaf birch seedlings in Virginia. Currently, it is an offense only to <u>remove</u> endangered plants

from federal lands. However, vandals can do as much harm to a rare plant species without ever removing it from federal jurisdiction. Our amendment would provide a means of punishing such acts without affecting in any way the legitimate uses of federal lands.

The above can be accomplished by amending Section 9(a)(2)(B) of the Act to read as follows (with new language underlined):

"(B) remove and reduce to possession any such species from any area under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove, cut, dig up, or damage or destroy any such species on any other area in violation of any law or regulation of any state or in the course of any trespass upon such area;

Inadequacies in the Role of APHIS

The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture plays an important role in the implementation and enforcement of the Act for plants and, indirectly, for birds. With respect to plants, its role could be strengthened by means of an amendment that would give the Fish and Wildlife Service enforcement authority, concurrent with that of APHIS, over the importation and exportation of plants protected by the Act or the Convention on International Trade in Endangered Species (CITES). Currently, Section 3(15) of the Act vests that authority exclusively in the Secretary of Agriculture,

who has delegated it to APHIS. The resources available to APHIS alone to combat the sizeable and sophisticated illegal international trade in protected plants are inadequate.

Beyond the matter of its limited resources, however, APHIS has shown little inclination to treat its responsibilities under the Act with the same aggressive vigor that it gives to its other statutory missions. Since 1978, it has referred only three cases for prosecution under the Act; by contrast, the Fish and Wildlife Service since 1981 has referred nearly a thousand cases of suspected violations involving protected wildlife. A few egregious examples illustrate APHIS's inability or unwillingness to do the job required of it. Plants of the genus Cyclamen have been subject to CITES controls for over a decade. The Netherlands has long been reported to be a major conduit for international trade in wild-dug Cyclamen of Turkish origin. In 1984 it exported some 34,000 specimens of this genus to the United States: yet it was not until 1987, and only after an inquiry from the Natural Resources Defense Council, that APHIS began requiring CITES documentation for such shipments. Even now, APHIS inspectors have not been instructed to inspect to determine whether plants claimed to have been artificially propagated appear to have been wild-dug.

Similar enforcement lapses have occurred with respect to many other species, including orchids from the tropics and highly

valuable succulents from Madagascar. Tips from plant experts and persons familiar with the trade, even suspicions by APHIS's own inspectors that there were serious irregularities in connection with shipments of these plants, failed to generate any investigative response by the agency. The agency's attitude seems to be that unless it is presented by a third party with conclusive proof of a violation, it will not mount even a minimal investigation. Perhaps most indicative of the agency's casual indifference to its enforcement responsibilities is that it let a 1984 memorandum of understanding with the Fish and Wildlife Service, whereby the latter helped APHIS with its plant enforcement task, lapse in 1985; despite Justice Department urgings, the agreement has still not been renewed.

To remedy this deficiency, one need only insert the word "also" immediately before the words "means the Secretary of Agriculture" at the end of Section 3(15).

A second area in which the performance of APHIS needs improvement pertains to the importation of birds. APHIS has no direct enforcement role under the Act or CITES with respect to birds. However, under the animal quarantine laws that it administers, it is responsible for ensuring that imported live birds are placed in quarantine stations for 30 days after importation to protect against the spread of disease. Its administration of the quarantine laws could be adapted to enhance

the Fish and Wildlife Service's enforcement role under the Act and CITES.

APHIS regulations require bird importers to give it advance notice of scheduled shipments. This enables APHIS to ensure that the necessary quarantine facilities are available. If a bird shipment arrives at a port of entry when the Fish and Wildlife Service agent is not present (weekends and evenings at many ports) or when the Service's agents are inundated with other work (as is frequently the case), APHIS authorizes the birds to be moved to a quarantine station. If the Fish and Wildlife Service subsequently wishes to inspect the shipment, it does so at the quarantine station rather than at the port. Since most quarantine facilities are privately operated, however, the Service's inspection occurs after the birds have left federal control. The opportunities for mischief in this arrangement are obvious. They could be avoided by instituting a simple system whereby APHIS promptly notifies the Fish and Wildlife Service whenever APHIS receives advance word of an impending shipment. This was one of the principal recommendations of a recent study done by TRAFFIC(USA) of the importation process for parrots and related birds, all of which are regulated by the Act or CITES. It is a sensible recommendation that can be accomplished administratively, without the need for any new legislation. Nevertheless, this committee should insist that it be done.

Recovery Plans and Recovery Plan Implementation

The ultimate goal of the Endangered Species Act is to bring about the recovery of the species it protects. To date, there have been a few notable successes in which listed species have recovered to the extent that they could be moved from the endangered list to the less imperiled threatened list or removed altogether from either list. They will likely soon be joined by other species for which progress toward recovery is well under way.

Given that recovery is the Act's ultimate objective, this subcommittee ought to look carefully at the way in which the Services endeavor to bring it about. From the very early years of the Act's implementation, the Fish and Wildlife Service utilized the device of formal, written "recovery plans" to guide its actions with respect to particular listed species. This device received express congressional approval in the Endangered Species Act amendments of 1978. Beginning in 1981, the Interior Department began investing heavily in the writing of recovery plans; indeed, former Secretary Watt regularly defended against criticism of his implementation of the Act by pointing to the accelerated rate of recovery plan writing during his tenure.

There are now written recovery plans for more than 200 listed species. They provide a basis for some studied

federal actions that make recovery no longer feasible within the prescribed time frame should be treated as causing prohibited jeopardy to the species. Conversely, where the adverse effects of a proposed federal action can be offset or mitigated, a specific time frame for recovery would enable the Service to identify the nature and scope of mitigation necessary to keep the recovery process on target. Finally, including specific cost figures in recovery plans would enable this committee to do a much more effective job of overseeing the implementation of the Act and of assessing the adequacy of the Administration's annual budget request for recovery activities.

Marine Species: Need for More Vigorous Attention

The National Marine Fisheries Service (NMFS) has the principal responsibility for the protection of marine species under the Act. Regrettably, many aspects of its implementation of the Act reflect very little commitment to a vigorous endangered species program. Two such aspects in particular are Section 6 and the listing of endangered marine species.

Two years ago, eleven years after the Act's enactment, NMFS entered into its first state cooperative agreement under Section 6. That fact was announced to Congress in the 1985 reauthorization hearings as a major development. It might have

observations about the merits of current recovery planning efforts and recommendations for their improvement. The first observation is that one must be careful not to confuse recovery plan writing with recovery plan implementation. Recovery plans are pieces of paper. Like medical prescriptions, they identify what is needed for species to get well. Just having the piece of paper is no guarantee of recovery -- one has to buy the medicine as well.

Recovery plans ought to specific about at least three things:

(1) the criteria that, when met, establish that the species has in fact recovered,

(2) the time frame within which the recovery effort is to be carried out, and

(3) the estimated costs to the appropriate Service of carrying out the measures for which it will be responsible under the recovery plan.

Recovery criteria will make explicit to all what has to be accomplished to reach the goal of taking a species off the threatened or endangered list. A specific time frame for that recovery would also give affected interests some reasonable expectation of how long a species is likely to stay listed. In most instances, recovery plans ought to aim to bring about the recovery of a species in not more than twenty years. Setting a specific time frame for recovery would also enable a closer linking of recovery plans to the Section 7 consultation process;

been, had NMFS ever sought to secure funds with which to implement that agreement or sought to establish similar agreements with other states. It has done neither. The great potential that Section 6 offers for cooperative, complementary programs involving the states and the federal government has already been described. For marine species subject to NMFS jurisdiction, that potential is going completely unrealized.

The situation is no less dispiriting with respect to listing. In thirteen and a half years, NMFS has added only six species to the endangered and threatened lists. It has never undertaken a comprehensive, systematic survey of the many mollusks, crustaceans, and non-commercial fish species native to our near-shore waters and estuaries to determine which of them may need the Act's protection. It should do so, or failing that, another entity should be asked to do so. When the Act was passed, it was recognized that there was insufficient expertise within the federal agencies to determine which native plants needed the Act's protection; as a result, Congress directed the Smithsonian Institution to carry out a comprehensive study. Its resulting work provided the basis for most of the currently plant listings and the many plant candidates. The failure of NMFS to mount a similar effort in more than a decade may warrant turning elsewhere once again.

The Act's Conservation Standard

Two years ago, concern was expressed by some interests that the then-recent decision of the United States Court of Appeals for the Eighth Circuit in Sierra Club v. Clark unduly limited the authority of the Secretary to control predatory threatened species like the wolf and the grizzly bear. Some expressed the fear that the decision would necessitate terminating Montana's longstanding sport hunting season for grizzly bears. That, of course, has not happened. Nor are the fears now being expressed about the effect of that decision on the proposed reintroduction of wolves into Yellowstone National Park and the natural reoccupation of Glacier National Park by wolves justified.

First, the Sierra Club decision did not limit the Secretary's authority to take or authorize the take of depredating animals in order to protect life or property. Indeed, the court left open two different means by which this can be accomplished: general regulations authorizing predator control activities and special permits under Section 10(a)(1)(A) of the Act. The latter authority is applicable to both threatened and endangered species. Thus, the often profferred argument, that effective control of threatened and endangered predators is necessary to sustain public support and deter vigilantism, can be accommodated under the court's decision.

Neither does the decision limit the Secretary's discretion with respect to species that are part of an "experimental population", as the Yellowstone wolves are to be. Instead the court very clearly refrains from reaching any conclusion on that issue. Thus, the Eighth Circuit decision should not be an impediment to sound management and conservation actions for either wolves or grizzly bears.

Other Matters Warranting the Subcommittee's Consideration

In general, we believe the Act is well crafted and does not need major overhaul. The few, narrowly drawn amendments we suggest are minor refinements to an otherwise sound statute. There are, however, a number of new ideas that may warrant the subcommittee's examination as it carries out its oversight task. Within the past two years, the wreck of the A. Regina off Puerto Rico raised questions about the government's ability to respond adequately to emergencies that pose a hazard to endangered species. The threatened breakup of that vessel on a reef adjacent to an important turtle nesting beach necessitated prompt removal action, but the expense of removal, and uncertainties about jurisdiction among federal agencies prevented prompt action. It may be appropriate, in light of that experience, to consider establishing a special fund or account that could be tapped for such unanticipated needs.

Another idea that may warrant consideration stems from the natural resource damage provisions of the Superfund law. Under those provisions state and federal trustees may sue to recover damages for injuries to natural resources, including endangered species, caused by the release of hazardous substances or oil spills. The salutary purpose of these provisions is to enable state and federal governments to restore injured natural resources and to impose upon those responsible for that injury the costs of restoration. Under the Endangered Species Act, those who lawfully destroy or harm endangered species are subject to civil and criminal penalties that serve as punishment for the offenses committed and a deterrent against future offenses. The goal of remedying the injury done to endangered wildlife resources is not necessarily served by this scheme, however. To serve that goal as well, the subcommittee may wish to explore the advisability of establishing a civil cause of action, similar to that created by Superfund, for recovering damages for injuries to endangered species that result from violations of the Act.

Finally, within the past year the Fish and Wildlife Service has promulgated new regulations to implement Section 7. Unlike the prior regulations they replace, the new regulations provide that the actions of federal agencies taking place in foreign countries are not subject to Section 7. In other words, although federal agencies are strictly prohibited from taking any action that jeopardizes the continued existence of a listed species in the United States, the same agencies have carte blanche to ignore the endangered species consequences of their actions overseas. Moreover, they need not even go through the consultation process to determine whether there are any endangered species consequences of their overseas activities. This rather remarkable result is currently the subject of litigation. This Committee may wish, however, to act to clarify the matter definitively.

STATEMENT OF
ROLAND C. FISCHER
Secretary-Engineer
Colorado River Water Conservation District
Glenwood Springs, Colorado

April 7, 1987

BEFORE THE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
UNITED STATES SENATE
HON. GEORGE J. MITCHELL, CHAIRMAN

Holding Hearings on S. 675, to authorize appropriations to
carry out the Endangered Species Act through Fiscal Years 1988-1992

Mr. Chairman, my name is Roland C. Fischer, Secretary-Engineer of the Colorado River Water Conservation District, headquartered in Glenwood Springs, Colorado. First Mr. Chairman let me thank you on behalf of the River District for the opportunity to submit this statement and to testify.

The River District was established by an act of the Colorado legislature in 1937 for the purpose of conserving and developing the waters of the Colorado River and its tributaries within Colorado and ". . . to safeguard for Colorado, all waters to which the state of Colorado is equitably entitled under the Colorado River Compact". The District includes all of twelve and parts of three counties in western Colorado. The River District Board consists of 15 members, each appointed by the County Commissioners of the respective county.

The River District is the major water policy agency of the state regarding the Colorado River and its principal tributaries, the Yampa, White and Gunnison Rivers. Approximately 65% of the undepleted flow of the Colorado River at Lee Ferry, Arizona, the Compact division point between the Upper and Lower Basins, originates within the boundaries of the River District. The attached map shows the area west of the Continental Divide which the River District occupies. The River District supports the reauthorization of the Endangered Species Act and requests a two-year reauthorization.

The River District, together with about 1,200 other public and private entities throughout Colorado, is engaged in providing water for Colorado citizens. As a member of the Colorado Water Congress, the River District is a participant in the Special Project on Threatened and Endangered Species of the Colorado Water Congress. The purpose of the Special Project is to develop a program for dealing with endangered fishes issues under the Act and simultaneously providing for the beneficial use of water by people in the Upper Colorado River Basin as part of a cooperative effort among the many agencies and organizations having legitimate interests in how the Upper Basin and its water resources are managed. Cooperating groups have included representatives from the states of Colorado, Utah and Wyoming, the Bureau of Reclamation, the Fish and Wildlife Service, water development interests such as the River District, the Colorado Water Conservation Board and environmental organizations. The goal of the effort was to find a practical and meaningful program to conserve and recover these fish species in a manner that does not disrupt state water rights systems, interstate compacts, and court decrees that allocate rights to use Colorado River water among the states.

A draft recovery program was developed by a Recovery Implementation Task Group and distributed for public comment at the request of the Upper Colorado River Coordinating Committee last September, at which time Frank Dunkle, now Director of the Fish and Wildlife Service, was Executive Director. Comments were made on the draft and procedures looking toward adoption of a recovery plan are in process in the three states involved.

The River District filed comments, as did the Colorado Water Conservation Board, an entity of the state within the Colorado Department of Natural Resources. The River District supported four basic understandings expressed by the Board in continued furtherance of the plan:

1. Involvement was to insure the continued development of Colorado water compact entitlements;

2. The program was not to impair or adversely affect Colorado's ability to use its compact entitlements;

3. Future increased depletions of Colorado River waters will not of themselves be grounds for determinations by FWS that water development projects are likely to jeopardize the continued existence of the endangered species or result in the destruction or adverse modification of their critical habitat; and

4. The program must be in compliance with state and federal law.

The River District believes that the Plan is devoted to achieving recovery of endangered fishes while at the same time, as the above understandings express, uses of Colorado's entitlements in the Colorado River are not jeopardized.

The River District comments also pointed to areas in which it felt the plan could be improved. Among our comments we suggested that consideration be given to delisting the bonytail chub. It appears possible this fish may already be extinct. Delisting would be more in the interests of the success of the overall plan. We also questioned the proposal to add the razorback sucker. This fish is not presently listed as endangered by FWS and is thus not properly eligible under the Act for recovery plan treatment. The District does however support a research effort and the monitoring of results for this fish. The razorback is believed to occupy the same habitat and range as the squawfish, thus the provisions for the squawfish will accommodate the razorback. Indeed, it appears that the primary problem for the razorback is not water supply, but instead predators.

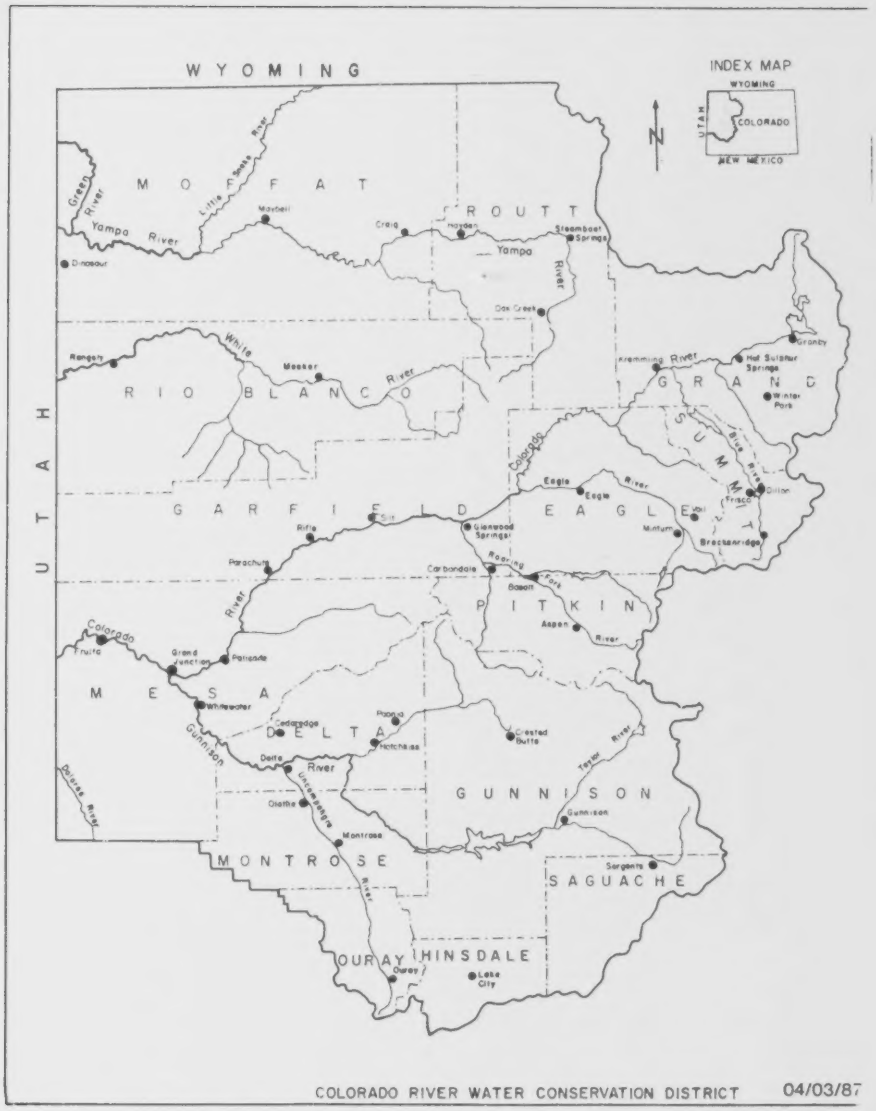
The River District considers the general recovery plan to be the optimum program to undertake while at the same time development of the Colorado River continues to the full extent of Colorado's entitlements under the compacts which control the river system. As Mr. Pitts, Director of the CWC Special Project will testify, this effort will require a commitment of funds, including an appropriation of $10 million to permit the

program to acquire instream flows as may be necessary to the recovery program efforts, as well as funds needed by the Regional Offices of the Fish and Wildlife Service and the Bureau of Reclamation to assist their participation in the recovery plan. It is hoped that the committee will support such funding.

We also ask your favorable consideration of the Water Congress proposal that the appropriations authorization be extended now for two years so that various procedural provisions relating to the efforts on both the Colorado and the Platte may get timely review and any further legislative action necessary to achieve these efforts may be considered. We think the two year extension would be consistent with the views expressed in the report of the Senate Committee last year (S. Rep. No. 99-261, pp 5-6) concerning the efforts of the working groups on the two river systems and the desirability of Congressional review of these efforts in a timely way to determine whether some additional authority need be provided in ESA, or other Federal laws.

The River District pledges its support of the continued efforts at a recovery plan. We believe that development of such a plan, as such plans are contemplated under Section 4(f) of the Endangered Species Act, will fulfill the policy of Congress stated in Section 2(c)(2) of the Act that federal agencies shall "cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species."

My thanks again Mr. Chairman for the opportunity to appear.



COLORADO RIVER WATER CONSERVATION DISTRICT 04/03/87

COLORADO RIVER WATER CONSERVATION DISTRICT

DIRECTORS AND OFFICERS - 1987
President
CHARLES S. HALTER
Delta County
Vice President
THEODORE L. ROLFE
Montrose County
ROBERT A. CHASE
Mesa County
DON CLASON
Moffat County
WARREN E. COMBS
Ouray County
CHRIS F. DOUGLAS
Mesa County
CHARLES E. GRAY
Saguache County
KENNETH O. KENNEY
Rio Blanco County
BRUCE RAUMAKARNAS
Summit County
DON ARECH
Eagle County
JOHN M. SEED
Garfield County
BILL NEEDHAM
Grand County
WESLEY E. SPANN
Routt County
LEE L. SPANN
Gunnison County
PURVIS C. VICKERS
Hinsdale County

April 30, 1987

The Honorable George J. Mitchell
Chairman, Subcommittee on Environmental
Protection, Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510-6175

RE: S. 675, Authorizing Appropriations for ESA

Dear Senator Mitchell:

Thank you for your letter of April 15. The River District greatly appreciates the opportunity that was afforded me to appear before your Subcommittee on April 7.

With respect to the questions attached to your letter, we are pleased to respond as follows:

1. Critique of the report of the General Accounting Office (GAO) made to you under date of March 26, 1987 titled "Endangered Species, Limited Effect of Consultation Requirements on Western Water Projects".

This report, contrary to the first impression I had in the limited time to look at selected pages before the hearing, resulted from an inquiry over an 18 month period by GAO representatives in the GAO Washington and Portland, Oregon offices, of a number of federal agencies in the 17 Western states, and in particular the Fish and Wildlife Service, limited to the effect of the consultation requirements of the Endangered Species Act (ESA) on western water development projects. The report indicates that in some instances non-federal entities were contacted. It is hoped that in any further work of this sort the River District might be among those contacted. We believe that we and our western Colorado colleagues have valuable "on the ground" experience in the area of section 7 consultations.

SUITE #204 • MID-CONTINENT BUILDING
303/945-8522 / P.O. BOX 1120 / GLENWOOD SPRINGS, COLORADO 81602

Our general perception is quite different than the GAO conclusion that the ESA's consultation requirements have, on the whole, "had little effect on western water development" (p.2). Our view is much closer to the views of those State administrators who feel there is friction because the federal agencies involved "do not fully appreciate the many competing demands for and economic value of water rights" and that the federal approach is to seek water through regulatory initiatives rather than by purchase or any other means such as appropriation in state courts (p.34). Further, where some accommodation is reached, we think the public perception has been that the whole process has been "excessive and unreasonable", as Basin Electric Power Cooperative Officials labeled the cost effect of the consultation requirements alone (p. 24). We do not think this is an isolated instance. It appears that the same situation is going on at the present in connection with the Concho water snake and the Stacy Dam Project in Texas. Any charge on top of the already high costs of developing long held water rights (many of which pre-date ESA) for essentially public uses is difficult to understand.

The report notes that the conflicts produced by the consultation provisions have led to alternative methods to seek solutions, one of which is the formation of a coordinating committee (p. 26). As your committee knows from testimony in previous years, and as Mr. Pitts and I both testified on April 7, 1987, the Colorado Water Congress undertook a Special Project to assist the Upper Colorado River Basin Coordinating Committee in the development of a recovery plan for the endangered fishes of the Colorado River system in the Upper Basin. The GAO report states quite accurately, in noting the issuance of the draft recovery plan last September, that "The program is to work within existing state water rights laws and interstate compacts apportioning the Colorado Rivers' waters" (p. 27). While this result is devoutly hoped for by all concerned, the plan has yet to be fully approved and implemented. As your questions recognize (Q.2), substantial public as well as private funds will be necessary for the program to be successful. A copy of the September 1986 draft recovery plan is being supplied for your information. It shows that the acquisition of water rights is but one of many planned activities to attain the goal of restoring the fish within a 15 year period so that they may be delisted as endangered species.

While the GAO report recognizes the coordinating committee technique, in also concluding that consultations under ESA "have had little effect on western water projects" (p. 30), the report apparently fails to appreciate fully the deep concerns and difficulties within the Upper Colorado River Basin which led to the rather massive coordinating committee-recovery plan approach. The GAO report recognizes early on (p. 3) that with respect to the Upper Colorado and the Platte, "the Service has held that any water depletions would likely jeopardize the endangered species present" (emphasis in original). With this as a given, consultation of course would be futile, leading to the project-by-project payoff approach known as the Windy Gap assessment.

This analysis shows that an inquiry limited to the effect of the consultation provisions is probably too simplistic an approach to assessing the difficulties imposed by the Act. Consultation itself has come a long way. As the GAO report notes Congress has several times had to amend the Act in an effort to make consultation work (p. 9). In its initial implementation under the 1972 Act, consultation was only between or among federal agencies. The applicant involved was precluded from the process. This of course engendered considerable suspicion because an applicant had no idea of what was going on. The difficulties ultimately led to the Congressional declaration in the 1982 Amendments that it was the policy of the Congress "that federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species." (Section 2(c)(2), 16 U.S.C.A. § 1531. (c)(2)).

This Congressional action has helped considerably. As both Mr. Pitts and I made clear in our recent testimony, we think Congress should continue its overview in this area and extend authorization for limited periods (we have proposed two years) to assist the agencies as well as the water users to adjust to the extraordinarily heavy mandate of the Act and assure the benefits of Congressional oversight.

We know all too well that other events such as difficulties in financing can forstall a project proposal. It is believed, however, that when a consultation indicates real problems in complying with ESA requirements a blow is dealt to all of the many elements which must fall into place (engineering, financing, public support, timely compliance with State and federal permits, etc.), because of the uncertain knowledge of the cost of dealing with ESA and the general understanding that such cost can be significant. Recovery plans of course are expected to avoid problems such as project delay or stoppage, litigation and requests for exemptions from the Endangered Species Committee, as well as the costs associated with consultations generally and so-called Windy Gap solutions. There will however, still be costs under any recovery plan, not to mention the considerable cost of developing the plan itself.

Chapter 3 of the GAO report concludes that the water laws in the 17 western states are compatible with the wildlife conservation objectives of the Endangered Species Act and observes that no incidents of conflict between the Act and state water laws were found in the course of the inquiry made by the GAO covering 7 1/2 years of ESA consultation activity. We have no quarrel whatsoever with the use of water for fish and wildlife, and in this regard there is no conflict. However conflict can nevertheless arise because under state

water law the priority of use must be observed. In times of shortage those rights junior to old established rights must give way. We find no indication in the treatment of state law in the report that the priority of use was taken into consideration.

With respect to informal consultations as treated in Chapter 4 (pp. 36-37) we would hope that there will be even greater use of informal consultations in the future. As previously indicated in these comments, the implementation of the Act following its passage in 1972 found the applicant itself simply shut-out of any consultation at all, with whatever consultation was conducted being strictly between the federal entity to which the application for a permit had been made and the Fish and Wildlife Service. The whole process has been assisted through the inclusion of the applicant. The informal consultation approach, which down-plays the doom and gloom atmosphere accompanying the possibility of a "jeopardy opinion" which will kill the project, is appreciated and is to be applauded.

2. "How will the proposed sources of funding from water users and the American public, which is to be used to acquire water rights in the Upper Colorado River Basin, ensure that water flows of sufficient timing and magnitude are provided where they are needed to protect the endangered fishes?"

As our comment to the state law portion of the GAO report indicates, each water right has its place in a priority system administered by the state. The more senior a right, the more it can be counted upon to assure that it will be available for use in competition with any other call on the available water. The acquisition of water rights which could be utilized as required to augment flows deemed necessary or desirable for endangered fishes will provide as much assurance as possible, in the scale of priorities, that the endangered fishes will be protected.

3. Response to NWF argument that nearly all the needs of endangered species and water developers could be met by proper regulation of the Bureau's dams in the Upper Colorado Basin and the Kingsley Project in the Platte drainage.

Treating only with the situation on the Upper Colorado we think this statement is: (1) Far too general to be of any meaning or use; and (2) Absurd if applied to specific streams in the Upper Basin. For example, the Yampa River and the White River, both substantial tributaries located almost entirely within Colorado, have no Bureau structures on them at all. How regulation at a Bureau facility not within the drainage involved could be effective on such streams is not immediately apparent. NWF apparently contemplates downstream releases as its testimony suggests that Congress make clear to the Bureau that "these [reservoir waters] can be used to protect the habitats of endangered species downstream." (NWF statement P. 28). In short, the NWF suggestion of this as an "example" of how we can have water development and economic growth and at the same time protect endangered species (id at p.27) is a rather glib statement with no substance.

I wish to again express our appreciation for the opportunity to participate and to assure you of the River District's availability in connection with any inquiries you may have.

Sincerely,

Roland C. Fischer

RCF

COLORADO RIVER WATER CONSERVATION DISTRICT

April 9, 1987

DIRECTORS AND OFFICERS - 1987
President
CHARLES V. HALLENBECK
Delta County
Vice President
THEODORE L. BROOKS
Montrose County
ROBERT W. CHILD
Pitkin County
DON CLIFTON
Moffat County
WARREN E. COMERER
Ouray County
CHRIS P. JOUFLAS
Mesa County
CHARLES R. IRBY
Saguache County
KENNETH O. KENNEY
Rio Blanco County
BRUCE BAUMGARTNER
Summit County
DON WELCH
Eagle County
JOHN M. REED
Garfield County
BILL NEEDHAM
Grand County
WESLEY E. SIGNS
Routt County
LEE L. SPANN
Gunnison County
PURVIS C. VICKERS
Hinsdale County

Mr. Bob Burdick, Fishery Biologist
U. S. Fish & Wildlife Service
Colorado River Fishery Project
529 25 1/2 Road, Suite B113
Grand Junction, CO 81505

Re: Redlands Dam Fishway Feasibility Study

Dear Mr. Burdick:

The Colorado River Water Conservation District is pleased to offer comments on the Redlands Dam Fishway Feasibility Study, Gunnison River, Colorado, prepared by the U.S. Army Corps of Engineers, Walla Walla District, dated December, 1986. In addition, we have included comments on your January 30, 1987 response to the initial comments by Redlands Water and Power Company, owners of the diversion dam to be impacted by the fishway structure.

The River District is the primary water policy agency for the Colorado River basin in Colorado, with the statutory reponsibility and authority to conserve and put to beneficial use the waters of the Colorado River. We also have a responsibility to existing water right holders in the basin, and have a long history of litigation and engineering analysis in protecting the rights of water users. The Gunnison River basin is an important part of the District, and the Redlands Water and Power Company has been applying water to beneficial uses for power generation and irrigation since 1918. The River District recognizes the importance of Redlands in the operation and administration of Gunnison River water resources, and has an interest in insuring that they are treated fairly in all matters related to the proposed fish passage structure.

SUITE #204 • MID-CONTINENT BUILDING
303/945-8522 / P.O. BOX 1120 / GLENWOOD SPRINGS, COLORADO 81602

The River District has been involved in the Endangered Species Recovery Program from its inception, and participated in the Colorado Water Congress Special Project which has been instrumental in Recovery Plan formulation. While we recognize the importance of the over-all recovery program in allowing water resource project development to proceed, and understand that a fish passage structure at Redlands may be an inevitable part of such a program, our responsiblily to local interests in this situation is clear. While we are not the official representative of the Redlands Water and Power Company, we definitely have an interest in seeing that the integrity of its water right is maintained, and will do what we can to see that Redlands' concerns are considered throughout the planning and decision process.

FEASIBILITY STUDY - General Comments

1. The Feasibility Study is incomplete because it does not address alternative means of providing a suitable site for experimenting with the use of fish ladders by endangered species. The facility is described as being experimental, and before proceeding to the design phase, a proper list of alternatives must be analyzed.

2. The Feasibility Study is incomplete because it does not address the issue of a water supply for the passage structure. This issue is vital to the interests of Redlands and the River District, because the right of Redlands to divert the full amount of its water right, or the natural flow of the Gunnison River, whichever is less, is the primary consideration when addressing administration of the entire Gunnison River. The Study identifies several ways in which Redlands may be required to bypass water at the diversion structure, either through the fish passageway or the existing sluiceway. Unless FWS has a firm supply of water upstream to use for these purposes, such a bypass is unacceptable. Does FWS have a contract for the use of stored water upstream, or is the intent to rely on junior water rights filed by FWS? These questions must be answered completely before Redlands can be sure that its rights will not be impaired.

3. There is no reference to NEPA compliance in the study, leaving it unclear where FWS considers the project to be in terms of proper public notices, hearings, and impact

studies. There is reference to a drilling program which could start as early as fall 1987, and design work which could begin any time. What is the FWS position on NEPA compliance for this federal action? What is the schedule for public involvement and document preparation?

4. The preferred alternative (1A), as shown, will cause a serious reduction in spillway capacity of the Redlands dam. The fish passage structure is likely to function as a section of the spillway for which flashboards cannot be removed during flood season. Considering the upstream flooding which occurred in 1984 with the flashboards completely removed, the fish passage structure is likely to cause higher backwater conditions and more damage. FWS must be expected to indemnify the diversion structure's owners against any claim for damages related to flooding upstream or downstream. There is no reference to any assumption of liability in the feasibility study, and no statement of FWS responsibility for the integrity of the diversion structure during flood events. Both of these issues should be addressed before proceeding to the design stage.

5. If this experimental fish passage structure is to be built at the Redlands dam, it should be done in a way which prevents any injury or inconvenience to Redlands Water and Power Company. This includes the financial burdens imposed by FWS in providing a feasibility study which answers so few of the pertinent questions about operation of the proposed structure that attorneys and engineers must be hired to protect water rights and answer questions about liability. Any revised cost estimate should include a budget item for mitigation of these and similar financial burdens, thereby enabling FWS to reimburse Redlands for expenses incurred as a direct result of the proposed fish passageway construction.

FWS LETTER OF DECEMBER 30, 1986 - General Comments

1. FWS indicates that it is impossible for a governmental agency to set up a "Construction Review Escrow Fund." Perhaps there is another way of addressing the issue using less objectionable wording. There should be no

problem in including a provision in project budgeting for a cash payment to mitigate adverse impacts of the project. This is exactly what FWS expects proponents of other water resource projects, whether public or private, to do in providing mitigation for wildlife impacts.

2. The trash shear boom structure is claimed to be of such benefit to Redlands that the reduced labor costs in trash removal will easily compensate for all inconveniences associated with the project. This includes the cost of engineering and legal analysis prior to the start of construction and subsequent changes in operation of the diversion structure as required by FWS. There is no reasonable basis for such a claim, and it does not address the comments offered by Redlands in its letter of November 26, 1986.

   a. Redlands observes that most of the trash problem has been with submerged debris, and that a trash boom would be only marginally helpful. This observation is based on a great deal of hands-on experience cleaning the trash racks, and should not be taken lightly.

   b. No real savings in labor costs will be realized unless Redlands is able to eliminate a full-time maintenance position as a result of the FWS project. This appears to be very unlikely. Even if a trash boom, vertical bar screen, and automatic trash rake are installed, Redlands will still have to have a staff on hand. FWS has not indicated how it will respond to emergency maintenance situations at the fish passage structure or the trash handling devices. Will FWS have a maintenance crew on 24-hour call, or will Redlands be expected to handle emergencies? Unless Redlands provides continuous inspection and maintenance, who would be available to call FWS in an emergency? It is hard to see how Redlands can be expected to reduce staff in such an arrangement.

3. There is no basis for threatening Redlands with having to bear the entire cost of the fish passage structure as mitigation for the impacts associated with their FERC permit for Project No. 6964-000. That project resulted

in no loss of habitat or alteration in historic operations. The fish passageway was in fact part of the mitigation plan for water projects associated with oil shale industry development, and funds are currently available to FWS from that source. Before Redlands applied for the permit for FERC Project No. 6964-000, FWS intended to finance the fish passage structure exclusively with money from the oil shale projects.

4. It has not been demonstrated that there is a loss of habitat to the endangered species involved. The Feasibility Study states that there are squawfish above and below the Redlands diversion structure. If the dam has been in place since 1918, and it does serve as a barrier to fish migration, then there must be a self-sustaining population in the Gunnison River above the barrier. If FWS does not know whether a squawfish will use a fish ladder, how can it be possible to know whether having a fish ladder will increase the total habitat available to the species? And how can the habitat be increased when there is currently a population of the endangered species occupying the habitat on both sides of the dam? If the dam does not serve as a full-time barrier, then the habitat has never been reduced, and no negative impact exists.

FWS LETTER OF JANUARY 30, 1987 - Specific Comments

#A 1-4 (Bar Screen)

In describing the advantages of the trash-handling system, FWS does not adequately address manpower requirements for both Redlands and FWS, or responsibility for action in emergencies.

#B (Barrier Wall)

The reduction in spillway capacity and associated backwater elevation is of serious concern, and was treated very briefly in the Feasibility Study. In most water projects (and this is certainly a water project), spillway capacity is a primary consideration and major component of project cost. It does not appear to have

been addressed at all when comparing costs of the identified alternatives, since the concept of a side-channel spillway will not be addressed until the final design phase. We certainly agree that the full original capacity of the spillway needs to be maintained, and also believe that the backwater effects of having the non-removable fish passage structure in the channel must be addressed.

#D (Trash Shear Boom)

See discussion under "General Comments, #2" above.

Comments on Feasibility Study

#2) The modification to Redlands' normal operating procedure which permits a bypass of 100-200 cfs under low tailwater conditions is not insignificant. FWS has not identified a water right to be used for such a bypass, or indicated the intent to arrange for release of stored water for that specific purpose. Maintaining such a bypass is an additional operation which FWS intends to assign to Redlands, increasing rather than decreasing the need for personnel.

#3) FWS avoids the issue of upstream flooding in its response to the comment by Redlands. Upstream flooding more serious than the 1984 example will occur if FWS constricts the channel with the fish passage structure without providing additional spillway capacity. To prevent high backwater conditions, the spillway will have to function in a way which replicates flow conditions over the original Redlands dam with all flashboards removed.

Land access to the right bank is not a simple issue. The most convenient land route from the left bank to the right bank is closed to vehicular traffic, and has been for 4 years. The road distance between The banks is approximately 9.5 miles. Again, FWS appears to be insisting on a change in Redlands' operating procedures which will result in an increase in manpower costs.

#5) The bypass of water to flush accumulated sediment specifically attributed to the fish passage structure should be addressed in providing a full water supply to

the FWS project. Redlands cannot be expected to bypass water for such purposes out of its water right.

The Feasibility Study and response to Redlands' initial comments are deficient because of: (a) failure to address water supply issues; (b) failure to identify alternative courses of action; (c) failure to disclose the status of NEPA compliance activities related to the project; (d) too much reliance on benefits to Redlands related to the trash shear boom; (e) failure to include spillway designs as part of the cost comparison of alternatives; (f) failure to adequately address finding a way to pay for Redlands' out-of-pocket expenses as a part of project costs; and (g) over-simplification of the anticipated changes in Redlands' operations due to the fish passageway structure.

Thank you for the opportunity to provide these comments. We would appreciate a written response, and you should feel free to contact me by phone.

Sincerely,

Michael R. Gross
Hydrologist

MRG/eb

c: W. D. Langford, Redlands Water & Power
Bob Ruesink, USF&WS
Charles Hallenbeck, CRWCD
Theodore L. Brooks, Esq., CRWCD
Chris Jouflas, CRWCD
Bill McDonald, CWCB
James S. Lochhead, Esq., CWCB
Senator Tilman M. Bishop
Representative Ed Carpenter
Representative Vickie Armstrong

THE STATEMENT OF THE COLORADO WATER CONGRESS TO THE
SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION, SENATE COMMITTEE
ON PUBLIC WORKS AND THE ENVIRONMENT
REGARDING
REAUTHORIZATION OF THE ENDANGERED SPECIES ACT (S. 675)

April 7, 1987

I am Tom Pitts, Professional Consulting Engineer, from Loveland, Colorado. Since December 1983 I have served as Project Coordinator for the Colorado Water Congress Special Project on Threatened and Endangered Species.

Mr. Chairman, I am grateful for the opportunity to testify before you this morning on behalf of the Colorado Water Congress. The Water Congress is an organization of approximately 1200 public and private entitites, including every major public water supply agency in our state. Put simply, our members are charged with the task of providing water for the people of Colorado. We come before you in support of the reauthorization of the Endangered Species Act and seek your consideration of limited amendments which are necessary to make it possible for us to implement existing provisions of the Act effectively in western states. With limited adjustments--none of which affects the substantive provisions of the Act--we believe that our shared national goals of protecting endangered species and providing a stable and safe water supply will both be achieved.

With this background, I would like to report to you on the progress that federal and state government agencies, environmental groups and water suppliers are making together in implementing the Endangered Species Act as we plan the future of the Upper Colorado River Basin and the Platte River Basin. What is particularly important in this broad-based cooperative effort--both to those primarily concerned with the

economic needs of the western states, and to those primarily concerned with environmental protection--is that our experience is demonstrating that the intent of the Congress declared in Section 2(c)(2) of the Act is achievable. That provision states: "...[T]he policy of Congress [is] that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species."

Colorado River Basin

I am pleased to report that four years of effort have led to the development of a proposal agreed upon by federal and state government agencies, and environmental and water interests for recovery of endangered fish species in the Upper Colorado Basin. The program has been endorsed by the U.S. Fish and Wildlife Service (Region 6), U.S. Bureau of Reclamation (regional offices in Billings and Salt Lake City), State of Utah, and the State of Colorado (see Attachment 1). An endorsement is expected soon from the State of Wyoming. The importance of this effort can be best understood with a look at its history.

In June 1983 the U.S. Fish and Wildlife Service released a tentative draft recovery plan for three Colorado River endangered native fish species which, if implemented, would have abrogated state water rights systems in Colorado, Wyoming, and Utah, and nullified water allocation under longstanding interstate compacts and equitable apportionment decrees of the United States Supreme Court. In response to that proposal, the Colorado Water Congress established the Special Project in December of that year. Our goal was to develop an administrative approach that would allow continued

water development in the Upper Colorado River Basin consistent with state water law and the Endangered Species Act. We have worked diligently and in good faith with a broad spectrum of interests to achieve that goal.

In March 1984 the Secretary of the Interior established the Upper Colorado River Basin Federal-State Coordinating Committee on endangered species. Participants included U.S. Fish and Wildlife Service, Region 6, Denver; Missouri River Division, U.S. Bureau of Reclamation, Billings, Montana; Upper Colorado River Region, Bureau of Reclamation, Salt Lake City; and the states of Utah, Wyoming and Colorado. The Coordinating Committee established fact-finding committees to explore the complex technical and scientific issues regarding the hydrology of the Upper Colorado River and the biology of the endangered fish species. The Colorado Water Congress has participated as an observer to the Coordinating Committee and as a member of the technical committees since their inception. Conservation organizations have also participated fully in this effort.

Early in 1985, the Colorado Water Congress proposed a draft recovery program for endangered fish species in the Upper Colorado River Basin. This proposal was designed to be a broad-based program leading to recovery of endangered fish species. After a year of intense negotiation and discussion, all interests reached a consensus on the recovery proposal. The final proposal provides for a long-term, comprehensive recovery program which addresses all causes of endangerment of the species, provides for corrective actions, and assures long-term funding. The development of this program is an outstanding achievement by the involved parties. The recovery program, and the cooperative manner in which it was developed, set a precedent for other regions where such conflicts have arisen.

Recovery Implementation Program for Endangered Species in the Upper Colorado River Basin

The recovery program produced through this process includes the following basic features:

1) 15-Year Time Frame: The goal of recovering endangered species in the Upper Basin is established within a fifteen-year time frame.

2) Recovery Implementation Committee: An implementation committee is established to oversee the recovery process. Membership includes representatives from the U.S. Fish and Wildlife Service, the U.S. Bureau of Reclamation, the states of Colorado, Wyoming and Utah, the Western Area Power Administration, water development interests, and conservation organizations.

3) Water Management: The recovery implementation program sets forth the means for identifying flow needs for endangered fish species in the Upper Colorado River Basin and the means for acquiring those flows pursuant to state water law. Acquisition of water to meet the habitat needs of endangered species in accordance with state water law assures continuing legal protection of flows under state water rights systems, and is consistent with Section 5 of the Endangered Species Act.

4) Habitat Development and Maintenance: The program provides for development and enhancement of the physical habitat of endangered species including development of backwaters, nursery habitat, spawning habitat and implementation of fish passage facilities to expand the range of available habitat for the species.

5) Stocking of Rare Fish Species: Research indicates that use of hatchery fish can be an effective recovery tool, particularly in light of the fact that naturally-spawned endangered species in the Upper Colorado River Basin are highly susceptible to predation by introduced game species. This appears to be the principal cause of endangerment of the razorback sucker. Rearing of endangered fish species in hatcheries and in grow-out ponds located along the river provides an opportunity for endangered species to reach a size where they are not susceptible to predation prior to reintroduction. The recovery program provides for research to ensure the genetic integrity of hatchery stocks, the development of hatchery capability, and use of grow-out ponds in the natural environment to help achieve population goals to be established by the Recovery Implementation Committee.

6) Non-native Species and Sport Fishing: There is increasing recognition that predation by non-native, introduced game fish is a significant factor resulting in endangerment of native fishes. In addition, some native fishes are susceptible to sport fishing. The recovery program calls for curtailment of stocking of non-native species in areas where such species might conflict with rare or endangered species. Related provisions include: research on the degree of competition and predation in specific areas; review of sport fishing practices and regulations to assure protection of endangered species; a multi-faceted information and education program to educate fishermen on the need for conserving endangered fish species; and a rigorous enforcement program to underly these policies.

7) Research Monitoring and Data Management: Research programs which have heretofore constituted the bulk of efforts under the Endangered Species Act have been prioritized and

organized to support scientific recovery goals. Detailed study plans are being developed and criteria are being established to evaluate the success of research efforts. A standardized monitoring program has been implemented to ensure application of consistent methodology in monitoring endangered species populations and tracking those populations towards recovery goals. A centralized data management system has been established to facilitate research activities and to make the best possible use of existing data.

8) Funding: Long-term annual operating and capital budgets for the recovery program have been established. Specific funding mechanisms have been identified which include contributions from the federal government, the states, power users and water users. Funding of this program is largely from non-federal sources. The power users and states will contribute more than $26 million over the life of the recovery plan. An additional element is the establishment of a $10 million capital fund for the acquisition of water rights in the Upper Colorado River Basin under state law. Provision of these funds by the Congress, and contributions by water users, will provide the mechanism for obtaining water on a priority basis to assure that flows are maintained in the future to provide habitat for endangered fish species. These flows, once acquired, will be protected under state law.

The Colorado Water Congress and conservation organizations support implementation of the recovery program. To fully implement this program, the Colorado Water Congress requests the Subcommittee to recommend a one-time authorization and appropriation of $10 million to establish the fund for acquisition of habitat, i.e., water rights, in the Upper Colorado River Basin in accordance with priorities established by the Recovery Implementation Committee. We

request that the reauthorization (S. 675) being considered by the Subcommittee, be amended to include authorization and appropriation of $10 million dollars during fiscal year 1988 to support the Upper Colorado River Recovery Implementation Program for endangered fish species.

Platte River Basin

In October 1983 the U.S. Fish and Wildlife Service proposed minimum flows in the Platte River in Nebraska to provide habitat for migrating whooping crane, which occasionally stop on the Platte and endangered and threatened piping plover and least tern, which use the Central Platte for nesting. The proposal would have resulted in conflicts with state water rights systems, interstate compacts and decrees of the U.S. Supreme Court equitably apportioning water among the states. In late 1984 the Colorado Water Congress, Wyoming Water Development Association, and Nebraska Water Resources Association petitioned the Secretary of the Interior to establish a federal-state Coordinating Committee on the Platte River to resolve these potential conflicts. The Secretary responded favorably and a federal-state Coordinating Committee was established in March 1985. The Colorado Water Congress has participated in the efforts of the Coordinating Committee to reach a solution on the Platte River which meets the requirements of the Endangered Species Act and respects state water management and allocation systems. Like the Colorado River Basin Committee, the Platte group includes representatives of the states of Colorado, Wyoming and Nebraska; the Bureau of Reclamation; the U.S. Fish and Wildlife Service; and water and conservation organizations.

The effort on the Platte River has been hampered in part by lack of adequate staff support from the U.S. Bureau of Reclamation and the U.S. Fish and Wildlife Service. In

1986, the three water organizations petitioned the two agencies to increase staff support to develop information necessary for resolving the conflict. Recently the two agencies provided additional support for developing information necessary to resolve hydrologic and biological issues associated with the Platte River. However, sustained federal funding for this effort is in question at this time. In order to successfully complete this effort, continued federal funding and staff support will be necessary. That is one of the reasons why we are asking that the reauthorization proposal be amended to require the Secretary of the Interior to report to the Congress on progress of the Committees in this important endeavor. The Colorado Water Congress believes that the Platte River Basin effort will achieve the same success as the Colorado River Basin effort, with continued good-faith efforts by all interests.

Proposed Legislative Action

Mr. Chairman, in order to continue the progress we are making, we ask that this Subcommittee report legislation reauthorizing the Act for two years, and that you include funding for the implementation of the Colorado River Basin recovery program. Funding of the recovery program will protect a national resource, and will result in effective implementation of the Act in the manner intended by Congress.

We also ask that you include procedural provisions which would allow us to continue our progress in the Upper Colorado River and Platte River Basins. Specifically, we ask that you provide:

--By March 1, 1988, or sooner, the Secretary of Interior shall provide Congress with reports of the progress made by Upper Colorado River Basin Coordinating Committee and

Platte River Basin Coordinating Committee. The report from the Secretary would also include recommendations, formulated with the assistance of the Basin Committees and interested conservation and water groups, of reasonable and prudent measures, including necessary funding mechanisms, which can be utilized for avoiding jeopardy to and enhancing recovery of endangered or threatened species while respecting and maintaining applicable state and interstate water allocations and management systems.

--The Basin Coordinating Committees shall attempt to implement plans consistent with the federal Endangered Species Act, maintenance of beneficial uses of water pursuant to state water rights systems, and the uses of water apportioned to the states pursuant to federal interstate compacts and U.S. Supreme Court equitable apportionment decrees.

Where such a plan is unanimously adopted by one or both Basin Coordinating Committees, the Secretary shall implement it, if it is consistent with the requirements of the Endangered Species Act and state water rights, interstate water compacts and Supreme Court equitable apportionment decrees.

--The reports from the Secretary to the Congress shall identify what further federal or state statutory or regulatory authority, if any, is needed to implement and continue to implement such plans, including levels of funding and funding mechanisms.

--The development of such plans shall not delay or halt consultations with the Secretary under the Endangered Species Act, water projects or project applications.

We would be pleased to have the opportunity to discuss specific language on these matters with the members of the Subcommittee and staff.

With the inclusion of such provisions in the context of a two-year reauthorization, the Congress will send a clear and positive message to all of the various interests represented in the negotiations in Colorado and Platte River Basins. Participating federal and state agencies--particularly the Fish and Wildlife Service, the Bureau of Reclamation, which have played a constructive and central role--as well as environmental and water groups, will understand that the Congress will be watching our work, and considering our results in the context of the implementation of the Act nationally. This will support continued good faith efforts by all parties, and will demonstrate that the two policies of the Act that some see as necessarily in conflict--the protection of endangered species and the continued application of state water rights systems--may be pursued simultaneously in the national interest.

Thank you again for the opportunity to be here this morning, Mr. Chairman. We hope that your Subcommittee will consider and incorporate these amendments to the Act which will in turn give us a further opportunity to report on our progress in the future.

ATTACHMENT 1

United States Department of the Interior
FISH AND WILDLIFE SERVICE

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228

IN REPLY REFER TO:
FWE/SE/Colorado River
Coordination Effort
Mail Stop 60153

To: Interested and Affected Parties

From: Upper Colorado River Coordinating Committee

The Upper Colorado River Coordinating Committee, established by formal Memorandum of Understanding on March 31, 1984, endorses the objectives of the program described in the proposed document entitled, "Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin." The Coordinating Committee hereby submits the attached document to the Secretary of the Interior and the Governors of the States of Colorado, Utah, and Wyoming so they may execute an appropriate cooperative agreement.

The Coordinating Committee further agrees to cooperate on interim recovery implementation activities and to work towards agreement on implementation of all elements outlined in the proposed recovery program.

Enclosure

Galen L. Buterbaugh, Regional Director
Region 6
United States Fish and Wildlife Service

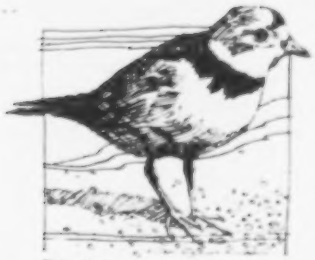
David H. Getches, Executive Director
Colorado Department of Natural Resources
State of Colorado

Bill E. Martin, Regional Director
Missouri Region
United States Bureau of Reclamation

Dee C. Hansen, Executive Director
Utah Department of Natural Resources
State of Utah

Clifford I. Barrett, Regional Director
Upper Colorado Region
United States Bureau of Reclamation

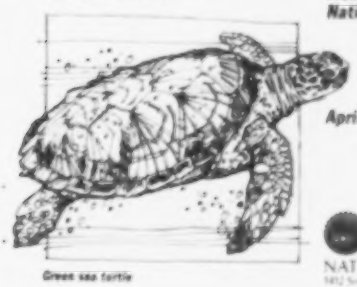
Warren G. White
State Planning Coordinator
State of Wyoming



Piping plover

Black-footed ferret

Small whorled pogonia



Green sea turtle

Statement of the National Wildlife Federation before the Subcommittee on Environmental Protection of the Senate Committee on Environment and Public Works on Reauthorization of the Endangered Species Act

S. 675

by
J. Scott Feierabend, Director
Fisheries and Wildlife Division
National Wildlife Federation

Christopher H. Meyer, Counsel
Rocky Mountain Natural Resources Clinic
National Wildlife Federation

Diane M. Debinski
Fisheries and Wildlife Division
National Wildlife Federation

April 7, 1987

Working for the Nature of Tomorrow
NATIONAL WILDLIFE FEDERATION
1412 Sidewell Street, N.W. Washington, D.C. 20036-2266

SUMMARY OF THE STATEMENT OF THE NATIONAL WILDLIFE FEDERATION ON REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

1. Longer reauthorization periods are needed for the ESA and the NWF supports the 5-year reauthorization proposed in S. 675.

2. The NWF supports increased authorization levels for the ESA and requests an authorization of approximately $63 million in FY 1988 to increase to approximately $94 million in FY 1992.

3. Changes to the ESA at this time are unnecessary and so the NWF supports expeditious reauthorization of a straight bill without amendments.

   - Reauthorization is more frequently being used as a forum to debate issues that are "species-specific" and of local concern rather than to debate the broader purposes and constructs of the Act.

   - Frequent amendments to the ESA hamper its effective implementation, cause uncertainty, and contribute to misallocation of limited resources.

   - Additional amendments to the ESA will increase the administrative burden on federal agencies already pressed to their limits.

   - Congress can amend the ESA at any time.

4. Recovery of species listed as threatened and endangered must be improved and achieved in a more timely manner.

   - Establishing time limits for the preparation of final recovery plans by linking plan writing to listing may be necessary.

   - Recovery plans should include a more rigorous review of biological data.

   - Funding for recovery planning must not be tied to the taxonomic status of a species but instead must be allocated more equitably between all species listed as threatened and endangered.

5. The consultation process has worked well and so the NWF urges the Subcommittee to again reject attempts to weaken or limit consultations.

   • Consultation has been well within the 90-day time limit and does not delay or impede development.

   • Formal and informal consultation appears to resolve conflict between development and listed species. For almost 50,000 consultations completed to date, less than 350 (0.5%) have found jeopardy.

   • The FWS's "Windy Gap" policy to avoid jeopardy appears largely unchanged since the 1985 hearings. The NWF urges closer scrutiny of this policy by the Subcommittee and the seeking of a permanent solution to the problem.

   • Agencies should routinely conduct post-opinion and post-construction surveys to ensure that species affected by an approved activity are recovering. These surveys also will be useful in future consultations.

6. The Section 10 experimental population amendments of 1982 have been of limited success in accelerating the recovery of threatened and endangered species. The NWF believes that, becasue the amendments have considerable potential for improving the rate at which listed species can be recovered and delisted, the reason for its limited use should be identified and --if appropriate-- corrected.

7. There is adequate water to sustain responsible economic development and to protect endangered species in the west.

8. Congress should reject western water development requests for a 2-year ESA reauthorization. Congress also should evaluate closely western water developers' amendments seeking to authorize an appropriation of $10 million for FY 1988 for purchase of water rights.

9. There continues to be no evidence to support assertions by western water developers that the ESA hampers development, delays projects, and escalates costs. The findings in the just-released GAO report "Endangered Species: Limited Effect of Consultation Requirements on Wester Water Projects" amplify this argument.

10. Water developers must work with all parties to develop a lasting and responsible resolution of the conflicts between water depletion and endangered species. This can be best accomplished through physical modifications of projects.

11. The NMFS is ill-suited to fulfill its obligations under the ESA and has done little to promote the protection and recovery of threatened and endangered species.

    - The NMFS is not fulfilling its responsibilities under Section 4(c) of the ESA to list threatened and endangered species.

    - The NMFS is not fulfilling its responsibilities under Section 4(f) of the ESA to recovery threatened and endangered species.

    - The NMFS has disregarded its responsibilities under Section 6 of the ESA to develop and fund cooperative programs with the states.

The species of plants and animals illustrated on the cover of this testimony are members of a life raft that Congress boldly launched 14 years ago. The green sea turtle, piping plover, small whorled pogonia, and black-footed ferret are but four of almost 1,000 species listed as threatened and endangered that are still afloat today because of the Endangered Species Act. To be certain, the seas have not always been calm nor the sailing smooth and we have lost a few passengers along the way. Nonetheless, the life raft has weathered these storms, it remains afloat, and is clear testament to the will and determination of the Congress and the American public that endangered species must be protected and preserved.

Today, the process of rebuilding and reprovisioning the life raft begins anew. There will be those seeking to give the vessel greater buoyancy and better stability for the going ahead, and there will be those who would like to see it drydocked indefinitely. Given the commitment of this Nation to endangered species, however, there can be no doubt that the Endangered Species Act will soon sail again. Of singular concern to the National Wildlife Federation (NWF) is that, whatever repairs might be performed, they be handled efficiently and expeditiously and that we set the Endangered Species Act out to sea again as quickly as possible. We are confident that, with the focus and support of this Subcommittee, this can be accomplished and the 100th Congress will be a highwater mark for endangered species.

Thank you for this opportunity to submit to the Subcommittee the views of the National Wildlife Federation on reauthorization of the Endangered Species Act of 1973, as amended (ESA). The NWF is the world's largest not-for-profit conservation-education organization. We have over 4.6

NOTE: The attachments to this statement have been retained in committee files.

million members and supporters throughout the United States and affiliated organizations in all 49 states, the Virgin Islands, and Puerto Rico.

The NWF has been a longstanding participant in the development and the effective implementation of the ESA. In fact, in 1956, fully ten years before enactment of the Nation's first endangered species law, the NWF's National Wildlife Week theme was "Save Endangered Species." Since 1936, when the NWF was founded, we have adopted more than ten resolutions promoting the protection and conservation of endangered species. Since 1970, the NWF has distributed over one million pieces of educational literature on endangered species and we have initiated numerous legislative and legal actions to promote the protection and recovery of endangered species. During the last six years, NWF has responded to an average of 19,000 requests for copies of its publication, "Endangered Species in the United States." Our historical interest and commitment to protecting endangered species has never been stronger than today as we seek reauthorization of one of this Nation's premiere pieces of wildlife legislation.

THE NWF SUPPORTS LONGER REAUTHORIZATIONS OF THE ESA

Funding for the ESA has been reauthorized three times since its inception in 1973 (Figure 1). The original statute (P.L. 93-205) authorized appropriations to implement the Act for fiscal years 1974-1976, a "three year" bill. The first reauthorization (P.L. 94-325) in 1976 was a "two year" bill, authorizing appropriations for fiscal years 1977-1978. The second reauthorization (P.L. 95-632) in 1978 was a "four year" bill, authorizing appropriations for fiscal years 1979-1982. The third reauthorization (P.L. 97-304) was a

"three year" bill, authorizing appropriations for fiscal years 1983-1985. Although appropriations to implement the statute were not reauthorized in 1985, the Senate bill (S. 725) for the first time supported a five-year reauthorization period.

In testimony presented before this Subcommittee on S. 725 in April 1985, the NWF urged the Congress to extend the ESA for five, rather than three, years. We are, therefore, pleased to see that S. 675 proposes to establish an authorization period for fiscal years 1988-1992, a period of five years. Equally encouraging is that the House reauthorization bill (H.R. 1467) also proposes to reauthorize the ESA for five years. The NWF commends the Subcommittee for calling for a five-year reauthorization and it is a provision of S. 675 we support.

THE NWF SUPPORTS INCREASED AUTHORIZATION LEVELS FOR THE ESA

The NWF has repeatedly urged the Congress to increase the authorizations and appropriations for endangered species. Our message has not changed. Against a backdrop of the many pressing needs of endangered species and the simple fact that extinctions are final, these budget requests pale in comparison to the budgets of so many other federal programs. It is no secret that dollars are the fuel that drive the federal engine. We are not asking for premium unleaded, just a full tank of regular so that the agencies' endangered species programs can operate at a level that, at worst, will slow extinctions, and, at best, will begin the long process of recovery for those species listed as threatened and endangered.

Working in concert with other national environmental and conservation organizations, the NWF has developed authorization levels for the ESA that mirror those contained in S. 675 for FY 1988. Specifically, we are recommending an authorization of almost $63 million for fiscal year 1988. The details for this request are contained in Figure 2.

We are proposing modest increases for fiscal years 1989-1992 that will culminate at a final 1992 authorization of almost $94 million. These increases (Figure 2) will be necessary to keep pace with the increased workload for all endangered species programs in the years ahead.

THE NWF SUPPORTS EXPEDITIOUS REAUTHORIZATION OF A STRAIGHT BILL WITHOUT AMENDMENTS

Fourteen years of experience with the ESA has demonstrated that the legislation is fundamentally sound. Because S. 675 does not seek amendment to the ESA, other than increased authorizations for five years, it can be characterized as a "clean and lean" bill. While NWF recognizes that parties on all sides of the issue are prepared to offer amendments to the ESA, we are at this time opposed to opening S. 675 to the amendatory process.* This position may well draw criticism. However, we believe a straight reauthorization is justified for the following reasons.

*During the 1982 hearings before this Subcommittee, NWF testified in support of the need for additional provisions in the ESA to provide incremental increases in protection for plant and "candidate" species. We continue to support these proposals and would endorse these provisions if offered as amendments.

1. Changes to the ESA at this time are not necessary

Since the ESA was first enacted in 1973, numerous amendments, both minor and major, have been adopted. As illustrated in Figure 1, most of the amendments have been positive in nature and designed to promote the conservation and protection of endangered species. It is the opinion of the NWF that we have resolved the major problems and deficiencies with the ESA and we are, increasingly, losing sight of the original intent of the statute and are now preoccupied with "fine-tuning." The following example illuminates this point.

In recent years, debate over the broader issues and constructs of the Act (i.e., listing, recovery, consultation) has been supplanted with debate that is much narrower and focused. For the first time in the history of the ESA, the 99th Congress failed to reauthorize the Act. The reason: protracted debate and eventual stalemate over parochial issues that certain members of Congress perceived were problems. More precisely, two species, the Alabama flattened musk turtle and the Concho water snake (neither of which were even listed at the time of the hearings) were used to thwart the efforts of this Subcommittee and the whole of Congress in reauthorizing a solid and improved ESA. Whether these issues will resurface is not the point. Instead, our concern is that reauthorization will now be used as a forum to debate issues that are "species-specific*, and of local significance

*Further evidence that ESA issues are trending towards "species-specific" came last Congress when it passed H.R. 4531 (P.L. 99-625), commonly referred to as the "Sea Otter Amendment." This legislation amended the ESA solely for the purpose of facilitating efforts in translocating the threatened California sea otter.

rather than address issues of national and international importance.

As shown in Figure 3, there are numerous issues and amendments that were raised during 1985 and that may again be raised during this reauthorization. Both "weakening" and "strengthening" amendments range widely in number, focus, and scope. While many of these amendments may be meritorious and would, to varying degees, enhance the conservation and protection of endangered species, the NWF questions the wisdom of opening the door to what will likely be a flood of demands, debate, and --ultimately-- delay. For this reason, we embrace the Chairman's "clean and lean" bill and suggest that not entertaining amendments will significantly increase the likelihood of an expeditious and timely reauthorization of the ESA.

2. Frequent amendments to the ESA hamper effective implementation

As described above, the ESA has been subject to close scrutiny, extensive discussions, and major changes. While many of these revisions have had positive benefits for endangered species, amending the ESA so frequently has hampered effective implementation of the Act. The resulting frequent regulatory revisions have caused instability, uncertainty, ineffectiveness, and misallocation of limited resources within the endangered species program. Moreover, amending the Act so often does not allow time to evaluate how well the changes are working.

In testimony given before this Subcommittee during the 1985 hearings, the NWF documented how the frequency

of reauthorization of the ESA creates regulatory problems for the federal agencies responsible for implementing the Act. For example, Section 4 and Section 7 regulations for the ESA amendments of 10 November 1978 were not completed until February 1980, two months after additional amendments to these Sections were enacted into law. The U.S. Fish and Wildlife Service (FWS) then had less than two years' experience in implementing these regulations before Congress again began consideration of even more changes to the ESA. Regulations implementing the Section 10 and Section 4 amendments enacted on 13 October 1982 were made final only six months prior to the 1985 reauthorization hearings (27 August and 1 October 1984, respectively). Thus, although the major changes made in 1982 have been in place for only a short while, some individuals and organizations may be willing to charge that these improvements to the ESA are not working and that Congress needs to undertake still more revisions. This endless tinkering with the Act has kept the National Marine Fisheries Service (NMFS) and the FWS in a state of perpetual rulemaking. This clearly is not in the interest of endangered species protection or economic development.

3. Additional amendments to the ESA will increase the administrative burden on federal agencies already pressed to their limits

Another important consideration to adding yet another list of amendments to the ESA is that these amendments will impose new administrative requirements on the FWS and NMFS. The result of this might be a reallocation of already limited fiscal and FTE resources away from existing and perhaps more

worthwhile programs, such as listing and recovery. In the alternative, the agencies might elect simply to ignore their new responsibilities, something to which the NWF and other conservation organizations would almost assuredly object. The point to be made is that the cost of implementing and administering new amendments to the ESA may, at present, far outweigh the benefits they are intended to provide for threatened and endangered species. This is a situation that most will argue should be avoided.

4. Congress can amend the ESA at any time

Although arguably, now is the time to amend the ESA, nothing prohibits Congress from acting to amend the statute before 1992, the year in which the Act will again be considered for reauthorization. Indeed, there is ample precedent for amending the ESA outside of the reauthorization process. For example, in 1976, Congress amended the Act to provide an exemption for the use of whale parts by Eskimos (P.L. 94-359). In 1977, Congress again amended the Act (P.L. 95-212), this time to effect changes in the Section 6 grants-to-states program. Simply put, Congress can amend the ESA at any time to address major deficiencies, and to resolve potential problems as they arise.

9

ESA ISSUES OF CONCERN TO NWF

The NWF presently is not proposing amendments to the ESA.* This is not to suggest that we believe the Act is entirely satisfactory and cannot stand improvement. Indeed, there are at least five major areas of concern to which we would like to direct the attention of the Subcommittee during this reauthorization. These are recovery, consultation, experimental populations, western water issues, and the endangered species programs of the National Marine Fisheries Service (NMFS). A close look by the NWF at these programs and how they are being implemented reveals there is considerable room for improvement. Below are our suggestions on how to improve these programs and ultimately to enhance the conservation and protection of endangered species.

1. Recovery and Recovery Planning

Listing species as threatened or endangered is an important component of the ESA. Equally important, and some may argue that it is even more important, is the recovery of species listed as threatened and endangered.

Indeed, the purpose of the ESA ultimately is to recover listed species to the point that they can be removed from the list, not to simply increase the inventory of listed species. To meet this goal, however, requires timely preparation and implementation of recovery plans. In addition to providing a

*For reasons discussed above, NWF is opposed to opening the reauthorization process to amendment. However, should the Subcommittee elect to entertain amendments, the NWF intends to participate in this process. At such time we may be prepared to offer our own amendments as well as providing the Subcommittee our position on amendments proposed by others.

working blueprint for recovery, these plans provide several ancillary, but important, benefits.

- Assisting state and federal agencies in planning land management activities, prioritizing tasks, and justifying certain annual appropriations.

- Identifying important research needs for state and federal agencies as well as academic institutions.

- Stabilizing populations of threatened and endangered species considered to be "threshold" before they become critically endangered, thus reserving human and financial resources for more urgent needs.

- Providing authoritative and oftentimes unique scientific source documents for use by researchers.

There are currently 422 species listed as threatened or endangered in the United States. There are an additional 506 species occurring outside of the U.S. also listed as threatened or endangered. According to the FWS, only five, or less 0.5%, of these species have recovered to the point that they have been removed from the list.* On the other side of the balance ledger FWS estimates that some 200 species of plants alone have gone extinct since 1974.

*These include the east coast population of the brown pelican, three species of birds from Palau, and the American alligator. Significantly, the recovery of the brown pelican is largely attributed to the elimination of the organo-chlorine DDT from the environment, and the recovery of the American alligator is primarily a response to increased harvest regulation enforcement and monitoring. In other words, neither recovery is attributable directly to the implementation of a sophisticated recovery plan.

11

Remarkably, recovery plans have been completed or implemented for less than two-thirds (243/422 or 58%) of the U.S.-listed species (Figure 4). Of those species without final plans (Figure 5), 83 (20%) have plans that are in preparation, and the remaining 96 (23%) species have no recovery action underway at all. Clearly, progress is not being made on the important task of recovering threatened and endangered species. Indeed, it is safe to say that we are losing ground each year as the number of species listed grows and the number of species recovered remains static. The following observations of the NWF are intended to stimulate discussion on how the current recovery program can be improved and enhanced.

a. the writing of recovery plans should be linked to listing

Establishing time limits for the preparation of final recovery plans may be necessary to ensure timely development and issuance. For example, both the American alligator and the Bachman's warbler have been listed for 20 years, yet neither of these species have a recovery plan. There are other examples of such unwarranted delay between listing and recovery plan development. For example, the Northern swift fox (listed in 1970), the jaguar (listed in 1972), the Utah prarie dog (listed in 1973), the Atlantic salt marsh snake (listed in 1977), and the desert tortoise (listed in 1980) all presently await development of their recovery plans.

According to the FWS, the average time between the listing of a species and the approval of its recovery plan is approximately three years. One way to expedite the development of recovery plans is to link the process with listing. For example, Congress could require FWS and NMFS to complete the writing of the recovery plan for a species 18

months from the date of final listing. While such a requirement would not ensure that the plan was subsequently implemented, it would, at the very least, guarantee that recovery plans were developed within a reasonable time period after listing. This would serve to prevent an additional backlog of recovery plans accumulating as more species are listed.

b. recovery plans should include a more rigorous review of biological data

A recurring criticism of recovery plans by the scientific community is that the documents lack adequate biological information on which to structure management options. To be certain, biological data for many endangered species are often limited, forcing recovery team staff to operate at a handicap. Nonetheless, where possible, recovery plans should go beyond outlines of general population objectives and instead include detailed, site-specific management goals for the species.

c. funding for recovery planning must not be tied to taxonomic status

The Congress never intended to weigh the taxonomic stature of one species against another, but did want all species to be viewed as equals and as integral components of functional ecosystems. According to the 1982 Senate Report, "Preferential treatment for 'higher life forms', species of a higher taxonomic order, has no basis in the Act nor in these amendments" (Sen. Rep. 97-418 at p. 14).

Unfortunately, the recovery planning process of the FWS does not reflect such an even-handed approach. It instead emphasizes what have been referred to as "higher," more "glamorous" species. The statistics to support this

observation are revealing. In FY 1986, for example, 56% ($6.3 m/$11.3 m) of the FWS's recovery program dollars were allocated to less than 4% (9/243) of the species listed (Figure 6). The lion's share of these funds was dedicated to recovery efforts for the bald eagle, peregrine falcon, grizzly bear, California condor, sea turtles, black-footed ferret, whooping crane, California sea otter, Hawaiian monk seal, and Florida manatee. By contrast, little or no recovery money was expended on insects, mollusks, crustaceans, or plants listed as threatened or endangered. For example, on average, insect species each received $11,000, mollusks $12,410, and plants $20,590, while fish received $69,060, mammals $173,360, and birds $192,860.

While such disproportionate emphasis may seem to have merit aesthetically and anthropomorphically, scientifically and ecologically this approach to endangered species recovery is naive and shortsighted. Certainly, the costs to recover some species are much greater and resource-intensive than others. Such an example is the effort to recover the California condor from the brink of extinction. This initiative has required tremendous capital investments for research, monitoring and live-trapping, captive breeding, and land acquisition. However, such intensive "hands-on" management for endangered species is not always necessary.

Relatively small monetary investments for many of the species that traditionally have been neglected could yield large returns for these resources. For example, the cost of writing a recovery plan for the small whorled pogonia is estimated by the FWS to be $1,000. Currently, so little is known about the distribution and population size of the plant that the major activities needed to initiate its recovery are simply monitoring and conducting habitat inventories to

determine the extent of its range. If, through these inventories, significant numbers of new populations are found, the species could be downlisted or even delisted.* Until this basic information is compiled, there simply is no justification for elaborate and expensive field and laboratory research.

Our concern is that FWS and NMFS need to allocate their resources for recovery more evenly among species listed as threatened and endangered. Doing this will bring credibility to their recovery efforts, and will make programs more biologically-balanced.

2. Consultation

Section 7(b) of the ESA establishes "consultation," a process to ensure that actions of any agency of the Federal Government do not jeopardize the continued existence of an endangered or threatened species or modify its critical habitat. This Section of the Act, which is the keystone to accommodating development projects and protection of listed species, has worked remarkably well. Time and again Congress has rejected proposals to dilute or even abandon consultation, largely because assertions made by its detractors are hollow. We ask the Subcommittee once again to to stand fast on this issue.

*This is what happened with the snail darter in Tennessee. Scientists conducting surveys of suitable habitat discovered additional populations of the endangered fish, which ultimately allowed the FWS to reclassify the species as threatened.

a. consultation does not delay or impede development

According to the FWS, the number of Section 7 consultations conducted between FY 1979 and FY 1986 increased four-fold (Figure 7). Most (91.9%) of these consultations were informal rather than formal (8.1%). The dramatic rise in the total number of consultations during this period is likely due to greater numbers of U.S.-listed species, which grew from 223 in FY 1978 to 409 in FY 1986.

Despite a steady increase in the number of consultations, the FWS continues to process them in a timely manner. In fact, as illustrated in Figure 8, the FWS has become increasingly efficient in completing consultation and, with a single exception in FY 1979 for jeopardy opinions, the agency has always been well within its 90-day statutory time limit. For example, in FY 1984 (the most current data available to NWF), 11 jeopardy opinions took an average of 21 days to complete, and 16 no jeopardy opinions took an average of 41 days to complete. Clearly, consultation does not delay development or construction.

b. jeopardy opinions

Of 48,538 biological opinions issued to date, only 325 (one half of 1%) have concluded jeopardy (Figure 9). Even more remarkable is that only 15 (less than 5%) of the projects for which jeopardy opinions were issued between FY 1979 and FY 1984 (the most current data available to NWF) resulted in cancellation or withdrawal of the project (Figure 10). Significantly, more than one-third of these projects were cancelled because of economic problems, not the ESA.

While these findings are encouraging and suggest that conflicts between development and endangered species protection are being addressed, they also give cause to speculate whether or not the FWS is enforcing Section 7(b) of the ESA adequately. Indeed, issuance of few jeopardy opinions and a complete lack of conflict with development implies that FWS may be more interested in compromising with project sponsors than in enforcing the ESA vigorously, and occasionally saying "no".

Two years ago, the NWF provided this Subcommittee with a comprehensive overview of the FWS's "Windy Gap" approach to avoiding jeopardy for threatened and endangered species of fish found in the western United States. In simplest terms, under the Windy Gap policy, the FWS agreed to find no jeopardy for a species so long as the project sponsor underwrote research to evaluate impacts of the project on the species. During the 1985 Senate hearings, the NWF vociferously opposed this policy, arguing that it contravened the very essence of the Act. Apparently, our remarks have had little influence on how the agency evaluates jeopardy for water projects. For evidence, one need look no further than the Stacy Dam and Reservoir Project in Texas and how the FWS is presently handling this issue. Apparently, it's "business as usual" at the FWS.

The FWS's Windy Gap policy, which amounts to selling away jeopardy opinions to project sponsors, must be curtailed. The National Wildlife Federation invites the Subcommittee to join us in exploring and seeking a permanent solution to this problem. This is discussed in greater detail below.

c. post-opinion and post-construction surveys are needed

There is little or no effort to evaluate routinely, and in a standardized fashion, the status of a species after the biological opinion for a project has been rendered and the project completed. This is true not only for projects receiving a no jeopardy opinion, but for those receiving a jeopardy opinion as well. The result, then, is that FWS and NMFS decisionmakers are operating without the benefit of knowing how well their "reasonable and prudent alternatives" are operating. This type of baseline information should be routinely compiled and evaluated by the FWS, NMFS, or the project sponsor, for two important reasons.

First, it is critical to know what impacts the project --either as originally designed or as modified through consultation-- have had on the affected species. For example, is the species stable, increasing in number, trending downward, or even approaching extinction? If the project is in fact adversely affecting the recovery of species, then some form of intervention will be required.

Second, compiling baseline data on how well certain project modifications work will be useful in future consultations. For example, the Environmental Protection Agency may find that applying pesticides to fields at certain times of the day will avoid jeopardy to endangered raptors foraging on the area. Being able to draw on this experience will be invaluable in guiding future decisions on other, similar pesticide consultations. By the same token, if it is learned that adjusting water flows below a dam site does not avoid jeopardy to an endangered mussel, then sponsors of similar projects, either proposed or already completed, must be made aware of this problem.

3. Experimental Populations

In 1982, Congress amended Section 10 of the ESA to encourage the establishment of "experimental populations." The purpose of the amendment was to "give greater flexibility to the Secretary in the treatment of populations of endangered species that are purposely introduced into areas outside their current range to further the conservation of the species" (Sen. Rep. No. 97-418 at p. 7). By relaxing certain restrictions otherwise applicable to listed species*, it was hoped that the conservation and recovery of endangered species would be promoted. However, in the five years since these amendments were adopted, only four species have been reintroduced as experimental populations.** This suggests that the original expectations for accelerated and more aggressive reintroductions under the amended Section 10 provision have not been met.

*All experimental populations are to be treated as if they are "threatened," and, for the purposes of Section 7, "nonessential" experimental populations (i.e., those not occurring on lands of the National Wildlife Refuge System or the National Park Service and are not necessary for the continued existence of the species) would be treated as species "proposed" to be listed.

**These four species include the Delmarva fox squirrel in Delaware (49 Fed. Reg. at 36418; 13 Sept. 1984), the red wolf in North Carolina (51 Fed. Reg. at 41790; 19 Nov. 1986), and the Colorado squawfish and the woundfin in the Upper Colorado Basin (50 Fed. Reg. at 30188; 24 July 1985). The FWS also is considering reintroduction of six additional species as experimental populations. These include the California sea otter, the watercress darter, the smoky madtom, the Lohatan cutthroat trout, the Guam rail, and a species of crawfish. Except for the California sea otter, the proposals to establish these experimental populations are still in draft form. The proposal to translocate and designate an experimental population of California sea otters was published 15 August 1986 (51 Fed. Reg. at 29362).

While the 1982 amendments were meant to facilitate reintroductions of endangered species, they did not require that all reintroduced populations be designated as experimental. In fact, the number of species that have been reintroduced as endangered outnumber those reintroduced as experimental.* Because reintroductions of species as endangered retain full ESA protection, this option for recovery should be utilized wherever possible. In many instances, however, reintroductions cannot occur unless the additional "management flexibility" provided under Section 10 can be assured. In the estimate of the NWF, the apparently underutilized experimental population component of the ESA warrants closer scrutiny.

Given the large number of species listed as threatened and endangered, why has the experimental population provision not been more widely and frequently used? There are several reasons. First, many species are listed for which the scientific and technical expertise needed to ensure a successful reintroduction (i.e., captive propagation and translocation methodologies) are lacking. Reintroduction of these species obviously is inappropriate.

Second, the cost to reintroduce experimental populations may preclude its more frequent use. For example, the FWS estimates that the cost to reintroduce the red wolf will be approximately $135,000 for FY 1987-1988 with a total cost over the five-year program period of $375,000 to $400,000.

*Examples of endangered species reintroduced into the wild without the Section 10 provision include freshwater mussels (Alabama), the watercress darter (Alabama), the masked bobwhite quail (New Mexico), the round-leafed birch (Virginia), and Kemp's ridley turtle (Texas).

Third, an experimental population carries less protection (i.e., it is treated as a threatened species) than a population reintroduced as endangered. Experimental population reintroductions are therefore likely to be met with strong resistance by members of the public who oppose the taking of any threatened or endangered species.

Fourth, the "historic range" for the species to be reintroduced often has been poorly delineated or perhaps not delineated at all. A case in point involves the birdwing pearly mussel, the cumberland monkeyface pearly mussel, and the dromedary pearly mussel. It has been suggested to reintroduce these three species to a site that occurs along a stretch of river between two known historic ranges. Until scientists confirm that the proposed release site was previously occupied by these species, reintroduction will not occur. The FWS and the states are reluctant to reintroduce species into areas of the country for which naturally-occurring "checks and balances" may be lacking. Additionally, the experimental population must be reintroduced into habitat that is geographically isolated from other nonexperimental populations of the same species. In some instances these areas may not exist and in others they have yet to be defined.

Finally, Congress recognized that, if the Section 10 amendment was to offer greater opportunity to recover species, then full cooperation of the states was essential. As illustrated above, however, the states have been reluctant to participate in experimental population reintroduction programs. There are two primary reasons for this.

First, although the proposal to establish an experimental population is initiated and approved at the

federal level, the fiscal, administrative, management, and enforcement responsibilities of implementing the program ultimately are borne by the state. This alone is usually reason enough for states to balk at reintroduction programs. Second, and perhaps even more important, states and the private sector fear that traditional uses of private and public lands (i.e., real estate development, recreation, and habitat management) will be constrained, if not completely precluded, by reintroduction programs. For example, the state wildlife agencies in Tennessee and Virginia have been hesitant to reintroduce the Nashville crayfish and the yellowfin madtom because of potential management restrictions to be imposed on the agencies. Both reintroductions remain in abeyance and it is uncertain when, if ever, they will be formally proposed.

The NWF believes that the Section 10 experimental population provision has considerable potential for improving the rate at which threatened and endangered species can be recovered and ultimately delisted. We also believe that this opportunity, for whatever reason, is being overlooked. If we can identify precisely why the experimental population provision has not been more widely used, then perhaps steps to remedy this situation should be taken. Obviously, if the problem is primarily budgetary or technical in nature, then corrective legislation is unnecessary. However, if the problem is seated in the language of Section 10, then corrective legislation may be appropriate.

4. Western Water Development Issues

Western water interests and endangered species rarely sit together at the same table. This is not so much by accident as it is by choice of industry. Ironically, developers and endangered species share too much, yet they share too little. Water is the lifeblood of both: for spawning fish, for irrigating fields, for staging cranes and roosting eagles, and for spinning turbines. From industry's perspective, endangered species already share so much of this lifeblood that development has become anemic. From the perspective of endangered species there is too little common ground and too little effort to find mutually acceptable solutions.

a. there is water adequate to sustain responsible economic development and to protect endangered species in the west

Some observers of the longstanding debate between these forces would argue that there simply is not room enough for industry and endangered species both to dine at the same table. They would assert that, if extirpation of a species is the cost we must bear for delivering water to an arid west, then so it must be. This view, however, is simplistic and myopic. The truth is that western water developers and endangered species <u>can</u> share the same table, there <u>can</u> be adequate water for all to use and enjoy, the needs of both <u>are not</u> mutually exclusive, and the two have more in common than might be imagined.

The concerns of western water developers and their perceived conflicts with the ESA are nothing new to this Subcommittee. The record is gorged with testimony given by development coalitions, such as the Colorado Water Congress,

the Colorado River Water Conservation District, the Water Resources Congress, and the Western States Water Council, asserting that the ESA hampers their projects, causes delay, forecloses options, and escalates project costs. As one spokesman for water development interests stated during the 1982 ESA reauthorization hearings before the House:

> Unlike some of the other groups which have testified in favor of amending the Act, our District has experienced and continues to experience real and present "horror stories" under the Act's administration. Moreover, the unique concentration of a number of listed species in western Colorado poses a serious threat to the entire future of water resources management in the Upper Colorado River Basin. We are convinced that most of those who feel the Act is generally working well and that it requires only "fine tuning" are persons who have viewed the Act's administration only from afar. We hope that Congress will not wait until the horror stories are too numerous to document before it acts to remove the crippling burdens imposed by the ESA.*

Alerted by these dire warnings from the western development lobby, Congress reviewed the record and quickly learned that their claims were unfounded and subsequently rejected them. Finding no basis for the empassioned arguments of project delay and financial disaster advanced by western water interests, this Subcommittee consistently and judiciously has rejected their volleys of amendments to weaken the ESA. During this reauthorization, the Subcommittee will likely again hear the developers' refrain that changes to the ESA are urgently needed or else all economic growth and development in the west will be brought

*Statement of Roland C. Fischer, Colorado River Water Conservation District, before the Subcommittee on Fisheries and Wildlife Conservation and the Environment on Reauthorization of the Endangered Species Act, House Document No. 97-32, page 666.

to a standstill. We urge the Subcommittee to respond again to these demands by demonstrating the same resolve and asking the same hard questions of those who would exploit the water resources of the west with little or no regard for the endangered species whose existence is inextricably tied to those resources.

From an historical perspective, western water developers have gone through two major phases in trying to resolve their discontent with the ESA. The first phase can be traced back to the earliest days of the Act, during the mid-1970's, when the statute was new and its reach uncertain. During those years western developers operated either as if the Congress had never passed the ESA or else as if their activities were somehow exempt from the provisions of the Act. This phase was short-lived and soon was concluded, however, when conservation organizations, such as the National Wildlife Federation, secured court decisions affirming that many, if not most, of the western water development activities were in direct violation of the ESA. Not only did these rulings awaken industry to their legal responsibilites under the ESA, but they served notice that the courts would actively ensure that industry fulfilled these important responsibilities. This set the stage for the second phase of conflict resolution sought by industry: seeking a legislative backdoor to "fix" the ESA.

Recognizing by the late 1970's that litigation would, for the short term at least, not solve their ESA "problems," industry next turned to the legislative process for relief. For example, testimony submitted by the Colorado River Water District during the 1979 ESA reauthorization hearings proposed an amendment to Section 7 of the Act that would, in their words, "achieve a reasonable balance between man's requirements and his environment." The broader purpose of

this and other amendments, it was explained, was to correct "the stultifying effect of ESA on reasonable and orderly development..." because it reflected consensus opinion of groups who "...do not have the tunnel-vision of the preservationist who would prohibit through the vehicle of the environment, development of all of the natural resources of this nation."*

The number of amendments offered to the ESA by western water interests increased significantly during the 1982 reauthorization hearings and included such items as balancing the rights of humans against those of endangered species, recognizing water development and personal property rights, and streamlining the Section 7 consultation process to better accommodate the needs of western developers.

b. Congress should reject western water amendments to weaken the ESA

Efforts by the western water lobby to amend the Act continue today. In testimony given just three weeks ago before the House Subcommittee on Fish and Wildlife Conservation and the Environment, Mr. Tom Pitts of the Colorado Water Congress proposed legislative action that would, among other things, allow all permitting, consultation, and water development to proceed before the recovery plan (for the Colorado River) and the habitat plan (for the Platte River) are developed. Stated differently, Mr. Pitts would have Congress establish a policy to allow the continued degredation and destruction of habitat for endangered species while a search for solutions to the problem continues.

*Statement of Mr. Kenneth Balcomb, Colorado River Water Conservation District, before the House Subcommittee on Fisheries and Wildlife Conservation and the Environment on Reauthorization of the Endangered Species Act, House Document No. 96-12, page 277.

The Colorado Water Congress also seeks a reauthorization period for the ESA of two years as compared to the five years proposed in S. 675. The logic behind the request for a shorter reauthorization is to ensure that there is a near-term opportunity for developers to amend the Act should negotiations to resolve western water conflicts deteriorate or ultimately be to their dislike. For the reasons argued above, the NWF supports a five-year bill without amendments and we urge the Subcommittee to accept nothing less.

As in the past, the NWF urges you to reject weakening amendments to the ESA offered by western water interests. Our reasons for this are threefold. First, we seek an expeditious and timely reauthorization. Any amendments are likely to jeopardize prompt resolution. Second, there is not the barest shred of evidence to support claims by industry that amendments are necessary. Third, and perhaps most importantly, rejecting industry's arguments will signal to the development community that it is time to abandon the legislative "fix" strategy and that it is time to come to the table to solve any problem there may be. This would bring conservation organizations and developers into a third and, in our opinion, final phase that could resolve western water-endangered species conflicts indefinitely.

c. water developers must work with all parties to develop a lasting and responsible resolution of the problem

Developers now understand that their projects must comply with the mandates of the ESA, that backdoor attempts to amend the Act to relieve them of their ESA responsibilities will not succeed, and that their only remaining option is to work constructively with conservation organizations and others to resolve their "ESA problems"

through physical modifications of the projects. Despite industry's claims to the contrary, the competing demands for water for human needs and for adequate water to sustain endangered species can be met. Members of this Subcommittee will hear that workable solutions exist, that we are not confronted with an "either/or" situation, and that developers simply do not need remedial legislation. Quite frankly, if developers had spent their millions of litigation dollars on the types of constructive efforts described below, the debate and controversy over western water development and endangered species might well have been a dead issue today. Our point, then, is that we can have water development and economic growth in the west and at the same time protect endangered species. The following examples illustrate how, with a little cooperation and some imagination, these goals can be accomplished.

d. adequate supplies of water are available for responsible economic growth and for protecting endangered species

1. The Upper Colorado River Basin

Massive water storage, diversion and depletion projects on the Upper Colorado River have seriously modified and degraded the habitats of several species of endangered fish. These projects, largely administered by the Bureau of Reclamation (BuRec), store water for which there presently are no users, such as municipalitites or agricultural interests. The BuRec reservoirs in the Upper Colorado River Basin, then, amount to nothing more than huge evaporation ponds. The NWF has repeatedly argued that the water impounded by these reservoirs could provide 100 percent of the water needs of endangered fish in the Upper Colorado River system as well as providing much of the water needed

for agriculture and municipal use in the Basin. These logical proposals, however, are consistently met with the illogical response that the BuRec is not authorized to release water for endangered species.

For this reason, the NWF believes that Congress should make clear to BuRec that, indeed, these waters can be used to protect the habitats of endangered species downstream. Directing the agency to release water to ensure the survival of these species is, in our estimate, a simple "win-win" solution.

However, current strategy to resolve the Upper Colorado River Basin conflict is seated in the concept of "depletion charges." In theory, a "water depletion charge" is levied on developers or others who propose to divert water from the Upper Colorado River system. These monies are then to be used to purchase existing water rights held by farmers and others, thereby ensuring that adequate water supplies remain in the river for development and for endangered species. While the NWF supports the general concept of depletion charges, operationally it is anything but satisfactory and provides no solid assurance that endangered species will, in fact, be protected.

First, the depletion charge is set at unreasonably low rates and may never generate the funds that ultimately will be required to protect the habitats of endangered species throughout the Basin. Second, it is a "one-time" charge, meaning that, once paid, developers will never have to pay another depletion charge for their water, regardless of how high the cost of water rises. This, too, presents serious problems for developing a stable, long-term funding base that will adequately protect endangered species in the Basin. Third, there is nothing to guarantee that the depletion

charge will be collected. And fourth, the U.S. public is being asked to foot a large portion of the bill for the program. As Mr. Pitts noted in his testimony before the House earlier this year, the Colorado Water Congress is proposing to amend the ESA to authorize an appropriation of $10 million for FY 1988 alone to assist in implementing the acquisition of water rights. This is nothing more than a direct federal subsidy for water development in the Upper Colorado River Basin and, in simplest terms, is a scheme that touches the pocket of every taxpayer in America so a select few might prosper. For these reasons the NWF calls on Congress to closely evaluate requests from western water developers to amend the ESA to authorize funds for the acquisition of water rights.

ii. The Platte River

As previously stated, industry representatives would have this Subcommittee believe that, unless amended, the ESA is going to stifle and smother economic growth in the west. There is no better example than the Platte River System to illustrate just how distorted and specious these claims really are and that there can be adequate water for development and growth as well as for endangered species.

The Platte River, which springs from Colorado and Wyoming, wends its way through Nebraska before reaching journey's end at its confluence with the Missouri River. The Platte is home not only to whooping cranes, bald eagles, piping plovers and interior least terns --all listed as threatened or endangered-- but also provides essential habitat for more than 500,000 sandhill cranes, millions of ducks and geese, and numerous other migratory species of wildlife. However, like the Upper Colorado River Basin, dams and diversions have modified the flows and ultimately the

habitat along the downstream reaches of the Platte in Nebraska. In fact, these projects now divert more than 70 percent of the historic flow from the river.

The current focus of debate on the Platte is the Kingsley Dam project, a massive water storage reservoir. As we have argued for the Upper Colorado River Basin, if properly regulated the Kingsley project will hold so much water that it can meet almost all the water needs for the Platte River System in perpetuity.

Working under contract with the NWF, the Platte River Whooping Crane Habitat Maintenance Trust developed the following water management strategy for the Kingsley Project. By retaining the reservoir year-round at conservation pool stage, 100 percent of the irrigation needs could be met and 95 percent of the endangered species needs could be met. Moreover, approximately 95 percent of the hydroelectric power needs could be generated, although under a somewhat modified output regieme. In this way, agriculture would continue unaffected, endangered species would continue to be protected, and hydroelectric opportunities would be only marginally affected. Thus, by integrating the operation of the Kingsley Dam with the ecological needs of the river --rather than viewing the Platte as nothing more than the project's "wasteway"-- the needs of both endangered species and human development may be satisfied. This, in our estimate, is the best solution for everyone, a fact that perhaps industry is not eager to share with the Subcommittee.

To conclude, then, the time has arrived for industry to enter the third and final phase and begin working cooperatively to provide permanent solutions to water conflicts with endangered species. As we have demonstrated repeatedly, the ESA does not preclude reasonable development: development can proceed and endangered species can be protected. It is not "one or the other" and this Subcommittee should not be mislead into believing such assertions.

5. The National Marine Fisheries Service and the ESA

The National Marine Fisheries Service (NMFS) is a component of the National Oceanic and Atmospheric Administration, an agency within the U.S. Department of Commerce. One of the primary missions of the NMFS is to "promote domestic and recreational fishing under sound conservation and management principles."* This charter frames the broad policy under which NMFS operates and is used to justify the agency's longstanding focus on management and utilization of economically-important commercial and recreational marine resources. As a consequence, the agency has given little --if any-- attention to one of its primary resource stewardship responsibilities, the protection and conservation of threatened and endangered species. As illustrated in the testimony that follows, not only is the agency ill-suited to fulfill its obligations under the ESA, but is disinterested in the need to protect and recover those threatened and endangered species for which it is responsible.

*Section 2(b)(3) of the Fisheries and Conservation Act of 1976, as amended [P.L. 94-265].

The ESA clearly sets out the statutory requirement that NMFS must work to conserve threatened and endangered species. According to NMFS, the agency is legally responsible for protecting cetaceans, pinnepeds (except walruses, for which FWS is responsible), sea turtles (when at sea), fish, all mollusks and crustaceans that are commercially harvested (those not commercially harvested are the responsibility of the FWS), aquatic life forms which reside during the majority of their life in marine waters (such as sponges and corals), and species which spend part of their life in both estuarine and marine waters (such shrimp and starfish). This information is summarized in Figure 11.

a. The NMFS is not fulfilling its responsibilities under Section 4 of the ESA to list and to recover threatened and endangered species

i. listing

According to testimony given by Dr. William Evans of NMFS, before the House Subcommittee on Fish and Wildlife last month, "The listing process is the critical step in implementing the provisions of the Endangered Species Act because it sets in motion consultation and recovery." If this is the case, then NMFS's listing program is in a state of suspended animation. According to sources at NMFS, the agency is responsible for protecting only 21 presently listed threatened and endangered species (Figure 12). This is revealing for several reasons.

First, as stated above, the FWS currently is responsible for more than 400 threatened and endangered species in the United States. Additionally, FWS has an estimated backlog of more than 3,000 candidate species that await listing. In stark contrast, the NMFS is responsible for only 21

threatened and endangered species and it has not yet evenprepared a list of candidate species. One might conclude from this that there simply are fewer species for which NMFS has jurisdiction and so the opportunities to list species are much greater for FWS than they are for NMFS. This argument, however, has no basis.

Second, studying the dates on which the 21 species were listed by NMFS shows that 15 of the 21, fully 70 percent, were "pre-listed" (Figure 12). In other words, these animals were incorporated automatically onto the list of threatened and endangered species when the Act was passed in 1973. Put another way, more than two-thirds of the species listed today by NMFS were not the result of affirmative actions taken by the agency, but instead were simply "gifts" of the 1973 Act.

Third, in the 16 years that since these species were listed, NMFS has added only six additional species to its list of endangered and threatened species. The most recent listing completed by NMFS was more than 18 months ago, when it listed the Guadalupe fur seal as threatened. By contrast, the most recent listing action taken by the FWS was less than one month ago when it listed the white bladderpod, a plant found in Texas, as endangered. The listing inertia that prevails at NMFS is dramatically underscored by the fact that the FWS has listed more species in the last six months than the NMFS has in the last 14 years.

Finally, the taxonomic breakdown for the species listed by NMFS does not reflect the work of an agency concerned with protecting the biological diversity of marine and estuarine environments. Quite simply, in 20 years NMFS has managed to list 13 species of marine mammals, six species of sea turtles, and two species of fish. Given the species abundance and richness of the marine environment and the

continued degredation and destruction of this environment, one must wonder why the NMFS list is so short and so narrow.

Testimony given by Dr. William Evans of NMFS before the House Subcommittee on Fish and Wildlife last month reflects the attitude his agency harbors towards listing. At time of the the hearing Dr. Evans could report only that NMFS had "received a petition to list the Chinese river dolphin as an endangered species" and that NMFS had "participated in a workshop on the biology and conservation of river dolphins held in China." Dr. Evans' testimony reveals the level of activity NMFS devotes to this activity. This does not reassure NWF and we are certain it has not comforted Congress.

It is difficult for us to explain this reluctance to act; there are obvious budget and personnel problems, and that may be part of the difficulty. However, we have observed that FWS has been able to use the academic community, interested conservationists and private citizens, all of whom are eager to work to conserve species that are in jeopardy. Since NMFS has not done even this level of effort, we can conclude only that the organization is overwhelmed by its commitment to commercial and recreational fishing and has little interest, in fact, in the responsibility it has under Section 4(c) of the Act.

ii. recovery

Section 4(f) of the ESA requires NMFS to recover threatened and endangered species to the point they no longer require the protection of the Act. Central to the successful recovery of a species is the preparation and implementation of recovery plans, the biological blueprint that charts the road to recovery. Before recovery efforts can even be initiated, then, a plan must be in place.

As of this date, the NMFS has completed a total of only three recovery plans for six of the 21 species (29 percent) listed by the agency as threatened or endangered (Figure 12). This is distressing when one considers that 15 of these species were listed on or before 1970, more than 16 years ago.

There appears to be little motivation within NMFS to secure the recovery of its listed species. While the FWS is anything but a role model for recovery efforts, its actions are in sharp contrast to the state of affairs at NMFS. For example, the FWS has completed recovery plans for 58 percent of its listed species and currently is writing plans for another 20 percent. While these figures alone should be of concern to NMFS, they should be even more troubling when one recalls that the agency has only 21 listed species as compared to the more than 400 listed U.S. species of the FWS. The NMFS must alter its approach to the processes of listing and recovery, or its record of performance as a steward of marine resources will be a dismal one -- and the fate of truly jeopardized species will be uncertain at best.

b. The NMFS has avoided its responsibilties under Section 6 of the ESA to develop and fund cooperative programs with the states

The members of this Subcommittee have received extensive and compelling testimony from the Environmental Defense Fund et al. to the need for a vigorous and well-funded Section 6 program. The strides for endangered species that have been made through the FWS's component of the federal-state cost sharing venture are well documented. So widely received is this program that requests from the states for Section 6 funds consistently outstrip the supply of available federal dollars. In fact, as of January 1987, a total of 76

cooperative agreements had been completed between the FWS and 46 states, Guam, Puerto Rico, and the Virgin Islands. The Section 6 picture that emerges at NMFS, however, is a different one.

This Subcommittee will recall that, during the 1985 hearings on S. 725, Mr. Richard Roe of the NMFS quietly unveiled the fact that, for the first time, NMFS was entering into a Section 6 cooperative agreement. The project, which involved sea turtles, was to be carried out with South Carolina. Four years later the project still has not received a single penny from NMFS.

The NWF does not understand why the NMFS has established only one Section 6 cooperative agreement --which isn't even funded-- compared to the 76 agreements that have been completed by the FWS. We urge the Subcommittee to explore with the NMFS why the two agencies' programs are so disparate and how to improve the participation of NMFS in the Section 6 grants-to-states program.

To conclude, the NMFS's responsibilities under the ESA to protect and conserve threatened and endangered species have consistently --almost consciously-- gone unheeded. It is plain to us that, despite a 14-year-old mandate to list, protect and recover threatened and endangered species, the agency continues to be preoccupied largely with servicing the needs of recreational and commercial fishing interests. Some have suggested that the NMFS's entire endangered species program should be transferred to the FWS where it would receive at least minimal attention and would not be the orphaned program it is now. Regardless, there is a lot of unfinished ESA business at NMFS. The NWF hopes this Subcommittee will take those steps necessary to bring a better balance between the agency's mandate to protect and restore endangered species and its mission of promoting commercial and recreational fisheries.

Statement by Minnesota Department of Natural Resources on the reauthorization of the Endangered Species Act (S675) before the Senate Subcommittee on Environmental Pollution, April 7, 1987.

As a result of the 1984 ruling by the U.S. District Court in Minnesota (upheld by the 8th Circuit Court of Appeals, Sierra Club and Defenders of Wildlife et al. vs William P. Clark, Secretary of the Interior, et al. 755 F2d 608 (8th CIR 1985)), the taking of an animal classified as "threatened" under the Endangered Species Act is prohibited (including sport hunting and trapping) except under the following circumstances: a) animals preying on livestock may be killed in some circumstances by Federal employees; and b) when the Secretary of the Interior determines that "... population pressures within an ecosystem cannot otherwise be relieved." This reduces the flexibility of the Interior Department and the states to manage threatened species effectively, and essentially results in there being little distinction between management programs for threatened and for endangered species.

The Timber (Gray) Wolf is a case in point. The wolf is classified as threatened in Minnesota. Because the law prohibits even closely regulated public taking, the state Department of Natural Resources has assumed essentially no role in the management of the species because it is unwilling to commit game and fish license revenues for a management program and has no other funds available. Meanwhile, the Interior Department is deemphasizing wolf management in Minnesota. Interior's wolf management efforts in the state now involve a livestock depredation control program and a wolf research project for which funding is declining. This minimal effort is inadequate to insure the long-term

viability of the largest remaining population of Gray wolves in the U.S. outside of Alaska.

The inflexibility in the law constraining Minnesota involvement also thwarts implementation of the recommendation of the Gray Wolf Recovery Team (1978) that this species be reintroduced into suitable habitat in other states. The Interior Department has been unsuccessful in getting any state to even seriously consider taking wolves for reintroduction, even as experimental populations. One of the main reasons is that states fear that such experimental animals, which would have threatened status, would be beyond the authority of the states to regulate.

Consequently the Endangered Species Act, as interpreted by the court, does not promote efforts of wolf recovery mandated in the act.

The Act should be amended to allow the development of truly shared management programs for all threatened species between the state and federal governments to include the closely regulated taking of threatened species other than just within the narrow limits allowed under the present statute.

The Minnesota Department of Natural Resources endorses testimony on the Endangered Species Act reauthorization by the International Association of Fish and Game Agencies.

Blair Joselyn
Roger Holmes
MDNR Section of Wildlife
6 April 1987

ENVIRONMENTAL POLLUTION SUBCOMMITTEE
U.S. SENATE COMMITTEE ON ENVIRONMENTAL AND PUBLIC WORKS
TESTIMONY
FEDERAL THREATENED AND ENDANGERED SPECIES ACT

April 7, 1987

The State of Montana favors a strong Endangered Species Act and program whose emphasis is focused on the prevention of the extinction of any species. We are concerned that this focus is not now apparent with the federal law, as it appears to make little distinction between those species considered to be endangered and those considered to be threatened.

The term "endangered" should be redefined to mean any species which is truly in danger of extinction throughout all of its range worldwide. The term "threatened" should be redefined to mean any species which is likely to become limited, rare or endangered in a portion of its range. This change would focus the Endangered Species Act protection to those species most severely threatened with extinction and most urgently in need of conservation.

Once these categories are clearly defined, appropriate distinction between how the force of law applies to the threatened and endangered categories must be made. A lack of legal distinction on this point limits management flexibility for the Secretary of Interior, as well as the states, restricting use of some management options in developing a comprehensive conservation program.

A case in point that is of particular concern to the State of Montana is our large predatory species which impact human safety, personal property and resident wildlife populations which are under the management responsibility of the states. In Montana these species are the grizzly bear and the wolf.

The first is a species that the state has been managing successfully for over 75 years, and the second is a species now extending its range into Montana from a secure population base in Canada.

The grizzly is considered a threatened species as it is in no danger of extinction in North America. At the same time, the species is managed in a more restrictive manner than is appropriate, given its potential for impacting human safety and personal property.

With respect to the wolf, it is considered an endangered species even though within a day's journey to the north it is considered a population which is neither endangered nor threatened. The

potential impact of wolves on personal property and resident wildlife populations will not be properly considered factors in the management requirements for the species under the current act.

The State of Montana supports amendments offered by the International Association of Fish & Wildlife Agencies which address problems which have developed as a result of the February 11, 1985 Eighth Circuit Court decision "Sierra Club et al. v. William Clark et al." The secretary and the states should have the appropriate flexibility and authority for taking threatened species. The rigid "extraordinary case" interpretation should apply only to species truly facing extinction. The extraordinary case should not be applied to threatened species having problems in a portion of their range or expanding into areas where they have been absent for long periods of time.

The definition of "conservation" in Section 16, USC 1532(1) of the Endangered Species Act should be amended to exclude reference to the "extraordinary case" (1532(3)). This would eliminate a standard which is difficult to define and impossible to meet (carrying capacity met or exceeded). This is particularly critical for species which can threaten human life, property or the conservation of resident game populations.

If the amendments suggested above concerning removal of the "extraordinary case" reference in the Endangered Species Act are not adopted, consideration should be given to establishing a separate provision in the act for the management of large predators such as the grizzly bear and wolf. It should provide for "taking" without the restraints imposed by the "extraordinary case" and require the Department of Interior to incorporate in the recovery plan of those "listed" large predators and states' objectives for prey species. This consideration will allow continued support for recovery by the states and the sportsmen and some funding support.

Another area of concern is the issue related to the funding of the Endangered Species Act and its being directed to species of high symbolic interest but not in danger of extinction. This focus ignores the many species genuinely in need of protection and actually in danger of extinction.

We recommend a congressional review of appropriations related to the species most in danger of extinction to support our point. The changes recommended for redefinition focus on extinction and should be accompanied by appropriate attention for funding the recovery of those species.

Along this same line, we suggest consideration of alternative funding for the Threatened and Endangered Species Act. Funding historically has been inconsistent and has lacked long-term stability. Although recovery plans identify costs of recovery and even assign costs to various agencies, both at the federal

and state level, there are no funding sources identified. Once a species has been listed and a recovery program initiated, the annual appropriation levels are unpredictable. From the state's viewpoint, we find more and more that responsibilities for funding recovery plans often fall to the state agencies and generally these efforts are funded by sportsmen's dollars.

An alternative to this lack of assured and adequate funding would be the establishment of an endangered species trust fund. A trust fund could be administered by the Secretary of Interior. This would be utilized for all species listed with an emphasis toward those most in need of recovery.

Given the evolving nature of the Endangered Species Act and the intent by all parties to strengthen the integrity of the act, Montana supports a short-term reauthorization until such time as the problems identified are resolved. We would support a three-year reauthorization of the act, and trust that necessary modifications to the act would be completed either now or in that period of time.

0403.6

a-014071S072 03/13/87 ICS IPMRNCZ CSP POMH
3077777e32 POM TDRN CHEYENNE WY 237 03-13
1237P EST 12:38 EST

western union **Telegram**

SENATOR MALCOLM WALLOP RPT DLY MGM
CAPITOL ONE DC 20510

THE STATE OF WYOMING SUPPORTS AMENDMENTS TO THE ENDANGERED SPECIES ACT OFFERED BY THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES.

1 OF THE AMENDMENTS OFFERED WOULD ADDRESS PROBLEMS CREATED AS A RESULT OF THE 1985 EIGHTH CIRCUIT COURT DECISION "THE SIERRA CLUB ET AL VERSES WILLIAM CLARK ET AL". THE SECRETARY AND THE STATES SHOULD HAVE FLEXIBILITY AND AUTHORIZATION FOR TAKING THREATENED SPECIES.

THE EXTRAORDINARY INTERPRETATION SHOULD NOT BE APPLIED TO THREATENED SPECIES HAVING PROBLEMS ONLY IN A PORTION OF THEIR RANGE OR THOSE EXPANDING OR INTRODUCED INTO AREAS WHERE THEY HAVE BEEN ABSENT FOR A LONG PERIOD OF TIME. THIS IS APPROPRIATE ESPECIALLY WHERE LARGE PREDATORS ARE CONCERNED IE GRIZZLY BEARS AND WOLVES WHICH COULD BE A THREAT TO HUMAN LIFE, PROPERTY OR CONSERVATION OF UNGULATE POPULATIONS.

WE SUPPORT FUNDING RECOMMENDATIONS AS OFFERED BY THE IAFWA AS WELL AS THE RECOMMENDATION TO REAUTHORIZE THE ACT FOR A 3 YEAR PERIOD AS OPPOSED TO 5 YEARS.

WE ARE ALSO CONCERNED THAT AVAILABLE FUNDS ARE OFTEN DIRECTED TOWARD SPECIES OF HIGH SYMBOLIC INTEREST RATHER THAN SPECIES TRULY IN NEED OF PROTECTION OR ACTUALLY IN DANGER OF EXTINCTION SUCH AS THE BLACK-FOOTED FERRET. WE RECOMMEND PROFESSIONAL REVIEW TO PROGRAM FUNDING PROPOSALS TO ENSURE FUNDING IS DIRECTED TOWARD THOSE SPECIES MOST ENDANGERED WITH EXTINCTION.

THE STATE OF WYOMING WILL CONTINUE TO SUPPORT A STRONG ENDANGERED SPECIES PROGRAM WHERE FOCUS IS ON THE PREVENTION OF ANY WILDLIFE SPECIES BECOMING EXTINCT.

BILL MORRIS DIRECTOR WYOMING GAME AND FISH DEPT
5400 BISHOP BLVD
CHEYENNE WY 82002

12:38 EST

IPMPCMX WSH

American Association of Zoological Parks and Aquariums

EXECUTIVE OFFICE AT OGLEBAY PARK, WHEELING, WV 26003 1698 (304) 242 2160

April 16, 1987

The Honorable George J. Mitchell
Chairman
Subcommittee on Environmental Pollution
Environment and Public Works Committee
410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Mitchell:

The American Association of Zoological Parks and Aquariums submits this letter for the record on the reauthorization of the Endangered Species Act (ESA). The AAZPA is the largest professional zoological park and aquarium organization in the world. AAZPA represents virtually every major zoological park, aquarium, wildlife park and oceanarium on the North American continent and the vast majority of the professional staff members employed therein. Collectively, zoos and aquariums in this country annually play host to more than 100 million visitors.

The goals and objectives of AAZPA are "to provide education, recreation and cultural enjoyment through the exhibition, conservation and preservation of the earth's fauna". The purposes of the ESA are to "provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved and to provide a program of the conservation of such species." We believe that the goals and objectives of AAZPA are supportive of and complementary to those of the ESA.

AAZPA plays an active role in the conservation and preservation of wildlife. Our Species Survival Plan strengthens and coordinates zoo breeding programs so that they can help in the worldwide effort to preserve vanishing species. The Plan seeks to (1) reinforce natural populations which have been reduced by human activities, disease or catastrophe; (2) provide animals for repopulation of original habitat when practicable; (3) serve as refuge for species destined for extinction in nature; (4) maintain repositories of sperm plasma and; (5) conduct research and develop animal husbandry techniques to support both captive and wild populations.

Most of our member institutions have excellent educational programs which provide information on the plight of the growing number of endangered species with which we share this planet. Because of this, our members provide an important service to the general public

OFFICERS

DIRECTORS

in behalf of wildlife. We believe that animals displayed in a proper environment in captivity can act as ambassadors for their wild counterparts. This is especially true if the enclosure is arranged in a manner to reflect at least a portion of the animals' wild habitat and is supported by carefully selected educational materials. We accept the responsibility that is ours in providing sanctuaries for some of the world's most endangered and threatened species.

AAZPA supports the reauthorization of the Endangered Species Act without weakening amendments. There is already a burgeoning illegal trade in live wildlife and we support every effort to end that. We also propose additional funding to enable full implementation of the Act.

Thank you for the opportunity to submit these comments for the record.

Most sincerely,

AMERICAN ASSOCIATION OF ZOOLOGICAL
PARKS AND AQUARIUMS

Robert O. Wagner
Executive Director

cc: Board of Directors

SERVING NEBRASKA

THE CENTRAL NEBRASKA PUBLIC POWER AND IRRIGATION DISTRICT

See reverse for complete addresses and telephone numbers

April 24, 1987

The Honorable George J. Mitchell
Chairman, Subcommittee on Environmental Protection
Committee on Environment and Public Works
United States Senate
410 Dirksen Senate Office Building
Washington, D.C. 20510

Re: S.675 - Endangered Species Act Reauthorization

Dear Senator Mitchell:

The Central Nebraska Public Power and Irrigation District (the "Central District") appreciates the opportunity to submit comments in response to the testimony of the National Wildlife Federation ("NWF") on S.675, a bill to reauthorize the Endangered Species Act. NWF's testimony before the Subcommittee on April 7, 1987 contained certain inaccurate statements and unsubstantiated conclusions regarding the operation of the Central District's water resource facilities. The Central District is hopeful that inclusion of the following responsive comments in the official hearing record will prove helpful to the Senate.

The Central District is a not-for-profit public corporation and political subdivision of the State of Nebraska. The Central District is Nebraska's largest irrigation district, providing irrigation water directly or indirectly to over 500,000 acres of land in central Nebraska.

The Central District owns and operates a multiple-use water resource project ("Project 1417") licensed by the Federal Energy Regulatory Commission. Project 1417, consists of Lake McConaughy, the largest reservoir in Nebraska, and a network of four hydropower facilities, smaller reservoirs, dams and canals which are operated to store and deliver irrigation water, generate hydropower, provide extensive recreational opportunities, and provide thermal cooling water for a fossil fuel electric generating plant. Project 1417 is dependent upon sufficient storage water reserves in Lake McConaughy to maintain the Project's irrigation, hydropower generation, recreation and cooling water functions.

NWF stated in its testimony before the Subcommittee that a "water management strategy" for the operation of the Central District's Project 1417 has been developed by the Platte River Whooping Crane Habitat Maintenance Trust ("Trust"). See Statement of NWF before the Subcommittee at 30. This "strategy" apparently

calls for substantial depletions of Lake McConaughy storage water reserves to maintain instream flows in downstream reaches of the Platte River. NWF claims that this "strategy" would permit the Central District to satisfy 100 percent of downstream irrigation demands, 95% of alleged instream flow needs, and 95% of hydroelectric power needs. Id. NWF also alleges that Project 1417 somehow could be regulated to "hold so much water that it can meet almost all the water needs for the Platte River system in perpetuity." Id.

The Central District is unaware of any Platte River "water management strategy" that has been developed by NWF or the Trust, much less any strategy for the operation of the Central District's facilities. The Central District is aware of a "prefeasibility study" conducted in cooperation with the Trust in November 1985 that attempted to evaluate the implications of releasing storage water from Lake McConaughy to maintain instream flows. That study, however, does not accurately simulate the operations of Project 1417, does not adequately consider irrigation demands, does not account for the important cooling water and recreation functions of Project 1417, and is by no means a reliable basis for developing a "water management strategy" for the Platte River or Project 1417.

The Central District also believes that there is no basis in fact for NWF's statement that Lake McConaughy could be operated to maintain instream flows without impairing the irrigation and hydropower functions of Project 1417. Nor is there any basis whatsoever for NWF's statement that Project 1417 can satisfy all of the demands for water in the Platte River system "in perpetuity." In 1982, the U.S. Bureau of Reclamation conducted a study to evaluate the impacts on Lake McConaughy storage water reserves if the reservoir was operated to provide instream flows. U.S. Bureau of Reclamation, Water Use and Management in the Upper Platte River Basin (Aug. 1982). The study concluded that:

> Impacts on existing uses of Lake McConaughy waters would be very substantial. For example, with this mid-August demand at Overton for the 1941-1977 period, Lake McConaughy would be severely depleted, and a shortage of water for irrigation and power generation would occur. The simulation run shows that the lake would be empty for 11 months in the study period and end-of-month contents would average more than 33 percent below the present condition.
>
> By meeting these flow demands, the recreation use of the lake would be severely curtailed.

Id. at 63.

The Central District has a strong interest in any "water management strategy" that affects the operations of Project 1417. Contrary to NWF's suggestions in its testimony before the Subcommittee, the only reliable study to date shows that regulation of Lake McConaughy to maintain instream flows in the Platte River would very severely affect the irrigation, hydropower, cooling water and recreation functions of Project 1417.

Very truly yours,

Jeffrey J. Davidson
CROWELL & MORING
Attorney for The Central
Nebraska Public Power
and Irrigation District

cc: The Honorable James J. Exon
The Honorable Stephen Karnes
The Honorable Virginia Smith
The Honorable Hal Daub
The Honorable Doug Bereuter

Defenders
OF WILDLIFE

FISH AND WILDLIFE SERVICE

ENDANGERED SPECIES PROGRAM

BUDGET REQUIREMENTS

A SUPPLEMENTARY ANALYSIS TO ACCOMPANY TESTIMONY ON

S. 675

A bill to Reauthorize Appropriations
to Implement the Endangered Species Act

Before The

Subcommittee on

Environmental Protection Committee

on

Environment and Public Works

United States Senate

Submitted by

John Fitzgerald

Washington Representative

Endangered Wildlife Program

April 7, 1987

The budget totals recommended in this document reflect the general consensus of the Endangered Species Act Reauthorization Coalition of some 30 Conservation and Animal Welfare Organizations. Members of the Coalition contributed substantially to the analysis and in some cases the drafting according to areas of expertise. This analysis also contains examples of enhancements Defenders and others have recommended for specific projects for Fiscal Year 88.

1244 NINETEENTH STREET, NW • WASHINGTON, DC 20036 • (202) 659-9510

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Listing	3,222 (59)	+3,778 (+20)	7,000 (79)
Law Enforcement	5,843 (132)	+ 3,598 (+35)	9,441 (167)
Permits	859 (24)	+ 100 (+2)	959 (26)
Consultation	3,022 (75)	+ 978 (+16)	4,000 (91)
Recovery	5,819 (53)	+ 6,381 (+32)	12,200 (85)
Research and Development	4.742 (65)	+ 258 (+4)	5,000 (69)
Cooperation with States	0 (0)	+15,000 (0)	15,000 (0)
Fisheries, Hatchery Operations - ESA	163 (3)	0 (0)	163 (3)
Total	23,670 (411)	+30,093 (109)	53,763 (520)

FY89 - 92:

Consultation: $5, 6, 6.5, 7 million.

Recovery: $14, 17, 20, 23.2 " .

State Cooperation: $15, 19, 23, 25 " .

The remaining functions would be level-funded.

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Listing	3,222 (59)	+3,778 (+20)	7,000 (79)

Proposed and Final Listing **$6,000,000**

The Endangered Species Act requires that the Secretary list species that warrant it as endangered or threatened. This key function is done by federal employees but so few are assigned to the task that a large backlog of species that warrant or may warrant listing has existed for years. Species are literally becoming extinct while waiting to be protected.

The current backlog of species for which existing data support listing is approximately 960 candidates (Catagory 1) At the $6m/yr. level these species could be listed in 10 years while appropriate delistings, reclassifications, and a modest number (20) of the approximately 2940 backlogged Category 2 candidate species could be accomodated annually, as needed. (Based upon approx. 3/yr average cost of $48,000. per species for listing, delisting or reclassification.)

It is necessary that FWS/OES achieve and maintain a higher listing rate than in the past in order to avert extinctions among candidate species and in order to fulfill the purposes of the Act.

Status Surveys **$500,000**

The current backlog of candidate species for which additional information is needed to determine whether listing is warranted is over 2900 species. (Category 2 candidates). At the current cost estimate of $6,000/per status survey the status of between 80 and 100 species could be determined annually, and thus decisions made as to whether listing is needed.

Candidate monitoring/Prelisting $500,000

This is to develop and implement an effective system for monitoring candidate species and taking action to conserve them in order to prevent extinction, avoid the need to list them, if possible, and determine whether emergency listing is necessary, if interim conservation steps will not reverse declines. This system should also be considered for application to recently delisted species. (Based on H.R. 1027, Section 1(a), approved by the House July 29, 1985.)

The Director of the Fish and Wildlife Service is planning to reorganize the Service. One effect of the recommendations under consideration would be a drastic reduction in the staff and role of the Washington, D.C. office of Endangered Species (OES) in the development of the list of "Endangered and Threatened Wildlife and Plants". Much of the role of the experienced staff of the listing branch of OES has already been eliminated. With increasing decentralization of the Service since 1984, for example, the lead responsibility for initially developing most listing packages has been given to field and regional Service Biologists.

We are quite concerned about what further reductions of OES may portend for endangered species. At a time when listings must be enhanced in order to avert further extinctions among the qualifying candidate species backlogged for listing (over 900), the Service's listing pace is dropping. Only 45 species were listed in calander year 1986, compared to 60 in calander year 1985. Indications are that the situation will not improve in 1987. The decline in performance may be due at least in part to the shift in listing responsibilitites which has already accurred.

We therefore urge the Committee to instruct the Service that the funds provided in this line item are to increase the current pace of, and personnel for, listing and not to decrease either pace or personnel

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Consultation	3,022 (75)	+ 978 (+16)	4,000 (91)

The Act requires that agencies consult with the Secretary to ensure that their actions will not jeopardize species or harm critical habitat.

An enhancement of $778,000 will provide for increased federal personnel to conduct consultations and on-site reviews to determine conditions in the field and after consultation to assess compliance with the terms of biological opinions. The annual number of consultations is roughly five times what it was in 1979 and the appropriations level is lower now in real dollars. The Service had adapted by conducting far more informal consultations but the number of formal consultations has been increasing recently and the quality of the consultation process, both in the formulation and the enforcement of the terms of biological opinions, has declined overall as the Service attempts to meet its 90 day consultation deadlines. This can result in damage to listed species and their habitats to such an extent that recovery is delayed and declines are caused contrary to the intent of the Act.

An enhancement of $200,000 will ensure the continued development and implementation of the Endangered Species Information System (ESIS) to provide the information needed to conduct accurate and timely consultations.

By FY92, Consultation should be funded at at least $7,000,000 given the increase in species, in formal consultations required, and the need to increase quality while maintaining timeliness.

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Recovery	5,819 (53)	+ 6,381 (+32)	12,200 (85)

The Act requires that the Secretary develop and implement recovery plans for every species listed unless he finds affirmatively that such a plan will not promote the conservation of the species. These plans are to help guide interagency planning and consultation under Sections 7(a)(1), (affirmative conservation by the Secretary and others), and 7(a)(2), (preventing government action from jeopardizing species).

The Secretary has approved plans for only 243 of the 928 species listed. Roughly 40 percent of 420+ listed species found in the U.S. have no approved recovery plan. Other plans in need of revision languish. In the mid-1980's far less than half of the approved plans were being actively implemented. Most of those that are implemented are only implemented to the extent necessary to avoid extinction or maintain current populations. Relatively few of the actions called for in the plans to move beyond maintainance and bring about recovery are ever taken. One result is that in 1984, the last year such reports were compiled, the Service's recovery implementation reports, covering 234 species, showed that only 23 species were known to be increasing, 10 were stable, trends for 154 were unknown and over 30 listed species were at crisis population levels or presumed extinct. Since then new species have joined that group. For example, the Black-footed ferret has fallen from 129 to around 20 and the Palos Verdes Blue Butterfly has been literally bulldozed into oblivion.

An enhancement of $6,381,000 would enable this element of the endangered species program to begin to meet its basic responsibilities to move species toward recovery and removal from the list. By 1992 the program should have $23,200,000 especially considering new recovery plans and newly listed species. Until such an investment is made, the daily indirect costs of managing endangered wildlife and the frequent costs of crisis intervention will outweigh the "savings" from underbudgeting for recovery.

This should include a minimum of $900,000 for recovery planning to ennable the Service to ensure that they will be able at least cover direct planning costs and keep up with the listing of new species anticipated while making progress in reducing the backlog of recovery planning.

This total should also include a minimum of $300,000 for the revision of plans as the Secretary reviews the status of listed species every five years.

Wolf Recovery Funding

-Eastern Timber Wolf - Enhancement of $305,000: $275,000 is needed to determine the extent, cause, and corrective steps necessary for controlling the incidence of heartworm and parvovirus; for working with state agencies to minimize the negative impact of road-building in wolf habitat, to continue the monitoring necessary throughout the seven wolf study regions to assure an adequate natural prey base and an adequate depredation control program and enhance public education about the wolf. In Wisconsin $30,000 is needed for more aggressive measures such as vaccination. Wisconsin is home to about 20 timber wolves that have come from Minnesota in recent years. Their recovery has been threatened by attacks of heart worm and parvovirus, diseases thought to be introduced by man or his pets.

Rocky Mountain Wolf - Enhancement of $350,000: $80,000 is needed for either the FWS or the Park Service to continue the monitoring of wolves and their prey base in the Glacier National Park area that is necessary in order to design an adequate depredation control program and implement an effective recovery program. $30,000 for public education and information including a slide/tape program and printed materials about wolf recovery; $80,000 for surveys of public opinion necessary for effective targeting of public education efforts; $10,000 on research on wolf-prey relationships. $100,000 for non-lethal depredation control technologies such as guarding dogs, taste aversion, and radio-triggered tranquilizing collars; $50,000 for developing and implementing a joint public-private program to of compensation for livestock lost to experimentally reintroduced populations of wolves.

The recovery total should include a restoration and enhancement of $170,000 for continuing the red wolf reintroduction project. The establishment of a self-sustaining population of red wolves at Alligator River NWR is a priority project, which should be fully funded. For FY88 $140,000 is needed to support work following the release of the wolves on the refuge in Spring FY87. (Costs include salaries for 2 FTEs to monitor and track the wolves, tracking equipment and air time, and travel for the

project coordinator and two additional pairs of wolves to be brought to the refuge.) An additional $30,000 is needed to pursue other red wolf release sites and to assure wild young will be available for future reintroductions. Reprogramming of existing base funds as the Administration proposes to support the red wolf project will take funds from other endangered species, including probably sea turtles and the red-cockaded woodpecker.

Too often recovery funds are provided by Congress and to a certain extent by the administration to the "glamor" species and less appealing species are neglected. For example, bats in U.S. Territories.

The recovery total should include $35,000 for an educational program in bat conservation for U.S. Pacific Territories. Five to six hundred endangered Marianas fruit bats (Pteropus mariannus) remain on the island of Guam. A proposal to expand the listing of this bat to islands in the Commonwealth of Northern Mariana Islands (CNMI) is under consideration by the Fish and Wildlife Service. Overhunting, poaching and predation by the introduced brown tree snake continue to play major roles in the decline in bat numbers on Guam and on a number of other islands in the Marinas and Micronesia.

The decline in fruit bat numbers in the Pacific is having a serious effect on the ecology and agricultural economy of the islands.

The production of an educational slide and video program is critical in the education of islanders about the importance of bats to island ecology. Such a presentation could provide information about the importance of bats to Pacific plants, such as breadfruit, coconuts and mangos and the problems which their extirpation could cause. The need for bat management would also be addressed. The program would be widely distributed throughout the region, particularly to schools.

In sum, in order to accomplish recovery for the many listed species, glamorous or otherwise, a substantial appropriation for general recovery work is essential. Therefore, the remainder of the recovery enhancement should be directed toward actions called for in plans or other actions clearly warranted for conservation and recovery.

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Research and Development	4.742 (65)	+ 258 (+4)	5,000 (69)

The Fish and Wildlife Service's Research and Development activities seek new strategies to enhance the survival and recovery of endangered species. There are two major thrusts to the Service's efforts in this area: biological studies and captive breeding programs.

Biological studies provide a greater understanding of the special characteristics of an animal and its habitat to speed recovery of the species. for example, Fish and Wildlife scientists are examining the behavior and environmental requirements of the Florida panther, the gray wolf, the woodland caribou, and the West Indian manatee, among others.

Captive breeding has as its objectives the establishment of wild populations of listed species in suitable habitat, or enhancing existing populations already in the wild. One of the most notable efforts in this area has been the rise of the whooping crane through captive propagation and its reintroduction into former native habitat.

An enhancement of $258,000 will allow continuation of these important studies, keeping the research capacity at a level necessary to support ongoing recovery efforts. The modest increase recommended will allow some important additional work to be performed, such as a study on the prey base for gray wolves in the western United States. Other needed studies include theoretical and general research on population viability; the application of island biogeography and biosphere reserve concepts to endangered species management; and baseling information on many endangered animal and plant species. General and theoretical research will become increasingly important as habitat continues to be lost and problems of genetic management increase. Taking a preventive approach to management would increase the chances of preserving species bewfore they reach critically low levels, making management more effective and less costly.

Increases in funding for endangered species-related research in the Cooperative Fish and Wildlife Research Units would complement the FWS R&D program. The in-house FWS research effort has tended to focus on a relatively few high-profile species. Expanding endangered species work in the Cooperative Research Units would provide a needed increase in the kinds of species covered.

72-965 - 87 - 8

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Law Enforcement	5,843 (132)	+ 3,598 (+35)	9,441 (167)

The Service is responsible for persuing those responsible for violations of the Endangered Species Act, and for gathering the necessary evidence for prosecution.The administration's approach to endangered species law enforcement does not do justice to the Act. It provdes neither the personnel nor the direction to properly enforce the law. The current funding level cannot even cover all costs, such as travel costs, for all agents, which considerably reduces their effectiveness.

An enhancement of $3,598,000 will allow the full utilization of the existing agents and the addition of critically needed personnel. It would also allow some funds for continuing the improvements in forensic capability started in previous years with funds for the forensic laboratory, now under construction.

The current number of Fish and Wildlife special agents is inadequate to meet the need: wildlife violations go uninvestigated for lack of funds. In addition, current funding cannot cover all necessary costs for existing agents. Cost per agent is about $85,000/year, including overhead, travel, costs of hiring expert witnesses, and other needs. The recommended enhancement would allow the addition of at least 25 special agents plus equipment.

These agents are needed to protect well-known species such as wolves, bears, and eagles but they are also sorely needed for other duties such as endangered species enforcement in U.S. Territories.

The total enhancement should include $88,000 for the placement of a FWS enforcement agent on Guam to protect the ten listed Guam species for which the Service is responsible.

From 1981 to 1984, the Fish and Wildlife Service maintained a

single law enforcement agent on Guam. By the time that the Marianas fruit bat was listed as endangered in 1984, however, that the agent had left the island. Following his departure, an agent from the National Marine Fisheries Service, working under a memorandum of understanding with the FWS, has been assigned to the island. That agent left Guam in late 1986. Since that time, there has been no enforcement of endangered species laws on the island.

Inspectors

Wildlife inspectors examine import and export shipments at 9 designated ports, plus others on the Canadian and Mexican borders. In 1986, these shipments were estimated at 70,000. A particular problem is the large containers which can conceal wildlife products; over 1,000,000 containers enter Newark each year. The current number of inspectors cannot cover this number of shipments. The general enhancement would allow adding 10 inspectors (at $32,000/inspector) at the Port of Newark.

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Permits	859 (24)	+ 100 (+2)	959 (26)

The Wildlife Permit Office issues permits under the Endangered Species Act and the Convention on International Trade in Endangered Species (CITES), compiles CITES annual reports, and acts as the CITES Management Authority for the U.S.

An enhancement of $100,000 will allow hiring additional staff or letting contracts to analyze information on the permits, primarily for imports under CITES, to detect suspected violations. These violations would then be reported to Law Enforcement for investigation. The task of analyzing permit data is currently done by conservation organizations which are unable to provide the consistent analysis the program demands.

Fish and Wildlife Service

Endangered Species Program

Dollar Amounts in Thousands
(Personnel levels are in parentheses)

	FY88 Administration Request	Change from Admin. Req.	Recommended Total
Cooperation with States	0 (0)	+15,000 (0)	15,000 (0)

The goal of state grants under Section 6 of the Endangered Species Act is to encourage cooperative agreements between the states and the federal government to mulitply endangered species work.

Section 6 provides financial assistance for a key element of successful treatment of endangered species. State grants are an integral part of the data gathering and recovery process. Section 6 grants stimulate interest and build expertise at the state level as well as increase the resources devoted to endangered species work through the state match.

In 1977, there were 21 cooperative agreements and an appropriation of $4,000,000, providing almost $200,000 per agreement.Today there are 76 cooperative agreements with 46 states and trust territories, a nearly four-fold increase in the number of agreements. Appropriations in FY87 totalled $4,300,000, essentially the same amount appropriated ten years ago when there were only 21 cooperative agreements. While Section 6 provided $200,000 per agreement in 1977, today it averages only $57,000, a woefully inadequate sum, and five cooperative agreements receive no funding at all. In addition, the number of federally listed species has increased for 623 in 1977 to 937 in 1986.

An enhancement of $15,000,000 will allow funding all cooperative agreements, including those currently without funds, at the FY77 level. The small aount of money currently available to each state makes it very difficult to carry out an effective endangered species program at the state level. In requesting Section 6 grants states have reduced their requests and have curtailed

their endangered species activities because of their prior knowledge that Section 6 funds would not be available. The states are willing and able to make good use of more funds. The following examples illustrate existing activities plus the kinds of activities to which states would give priority with significantly higher amount of Section 6 funds.

- Massachusetts received $16,000 to develop a recovery plan and life history of the Plymouth red-bellied turtle. Far more research and work on habitat protection needs to be done for the piping plover, the short-nosed sturgeon in the Merrimack River, the Atlantic Ridley sea turtle, the roseate terns at Cape Code and the small-whorled pogonia.

- New York received only $19,500 of the $71,000 it requested for work on its endangered plants.

- The Florida panther numbers are probably between 20 and 30 and depends on Section 6 funding for much of its protection. Many endangered Florida species already suffer for lack of funds to the extent that even well known species such as the red-cockaded woodpecker and the manatee are losing habitat, and in the long run, will lose the fight with extinction if work on their behalf including not only research but tougher law enforcement and more aggressive recovery work at the state level is not increased.

NRDC

Natural Resources
Defense Council

1350 New York Ave., N.W.
Washington, DC 20005
202 783-7800

April 7, 1987

The Honorable George Mitchell
Chairman, Subcommittee on Environmental Protection
U.S. Senate
Washington, D.C. 20510

Dear Senator Mitchell:

The Natural Resources Defense Council asks that this letter be included in the record of the Subcommittee on Environmental Protection's hearing on reauthorization of the Endangered Species Act. The material contained herein supplements testimony presented by the Environmental Defense Fund and Defenders of Wildlife in support of amending the Act to restrict collecting of endangered plants growing on lands not under federal jurisdiction.

Certain types of plants are eagerly sought by collectors for use in horticulture. These include cacti, other succulents, orchids, and carnivorous plants. Unfortunately, rarity is one factor which stimulates connoisseurs' acquisitive instincts; therefore, endangered species, both before and after their formal listing under the Act, are particularly prized. Even where they are available, propagated plants may not satisfy some people because they may not be true to type, may be of questionable genetic purity, or simply may be "unrealistic". The rarity factor means that even relatively unattractive types of plants may be collected.

Since collecting of endangered plants from non-federal lands is currently legal, occurrences are poorly documented. Nevertheless, some disturbing instances have been verified.

In 1984, the extremely rare Virginia round-leaf birch, Betula uber, suffered a dramatic setback at the hands of mankind. This tree had only thirty seedlings at the beginning of that spring, all on private land. Eighteen of these shortly disappeared, apparently due to collecting or vandalism. While the Virginia round-leaf birch is not a particularly attractive species, it is sought because of its rarity; at least one nursery is offering what are said to be propagated plants.

The green pitcher plant, Sarracenia oreophila, was listed as endangered in 1979. It is one of the rarest carnivorous plants in the world and highly sought-after by the specialist collector. In 1981, several plants were taken from one bog in Alabama. In 1984, a man from Florida travelled to Alabama to collect plants, returned to Florida and mailed specimens of the wild-collected plants to several people in other states. Fish and Wildlife Service law enforcement officials were not certain whether these actions violated the prohibition on "interstate commerce" in endangered plants currently in the Act.

In 1986, another 22 plants of the green pitcher plant were taken from private land. This collection was described by FWS Regional Director James W. Pulliam, Jr., as involving "a rather large percentage of plants from one of the better colonies..." and as having "significant adverse effects on our ongoing recovery efforts for this endangered species ... "

Also in 1986 all plants in a small population of the woodland orchid, the small whorled pogonia (Isotria medeoloides) were dug up from a site in New Hampshire.

In addition to these examples of actual collecting, we can document a potential threat for many species of listed plants. In 1982, a cactus dealer sent a letter to his best customers, offering to collect and ship 19 rare cactus species, including 7 listed under the Act as endangered or threatened. He said: "As you may know most of the plants on this list are very rare and quite a few are on the indangered (sic) species list. The names of these plants will have to be changed to be shipped overseas ... This list is only being sent to a select few of my best customers, so please treat it most confidential. Thank you ..."

Since the dealer was clearly engaged in interstate and foreign commerce, his very offer to sell the plants was a violation of the Act. Nevertheless, the case illustrates the continuing demand for listed plant species of certain types.

Collecting of proposed or candidate species can also be documented. These cases again illustrate the demand. Since collecting remains legal, and no case has ever been tried against an alleged violation of the prohibition on interstate commerce, NRDC believes that collecting of these species probably continues after they have been listed.

Pediocactus knowltonii. This tiny cactus, one of the first to be listed as endangered, is a collectors' item because of its diminutive size and large flowers. Between 1965 and 1981, its

population was reduced from about 5,000 to 1,500 by flooding by a dam and commercial collecting of many of the remaining plants. The landowner was unable to prevent people from entering his land for this purpose. FWS botanists contend that only because collectors believe that the population is too depleted to reward a collecting trip have they not disturbed the area in recent years. The land has recently been acquired by the Nature Conservancy, but it remains vulnerable to collectors because it still remains without legal protection.

Two Florida cactus of the Cereus genus face threats from private collecting and vandalism with guns and machetes. Cereus robinii, the Key tree-cactus, is a listed endangered species found on the Florida Keys and in Cuba. The Florida population is on both private and public lands. About ten years ago, a nursery reduced populations of several Cereus species, including C. robinii, from one isolated grove on the key. Cereus eriophorus var. fragrans, the fragrant wooly cactus, is also listed as endangered. The population is limited to 40-50 plants on private lands adjacent to a state park. Authorities suspect that plants were collected in 1984.

Rhododendron chapmanii, the Chapman's rhododendron, is one of the loveliest of the native rhododendrons with brilliant pink blossoms. Listed as endangered, it is native to the pinelands of Florida. Before the listing, one of only four known populations was totally eliminated when its location was discovered by collectors. The fact that propagated plants are offered for sale is evidence of a continuing interest in this species.

Even the less beautiful or conspicuous species are subject to collecting. Acanthomintha obovata ssp. duttonii, the San Mateo thornmint, is a small herb with a remaining population of only 2,000 to 3,000 plants located in a county park. In 1983, several large chunks of turf, including soil, were removed by one or more collectors.

The potential for collecting threatens a significant proportion of listed species. Indeed, of the 155 species of plants now listed, at least one-fifth were listed primarily because of substantial threats from commercial or non-commercial collecting. Among these are 23 cactus, Agave arizonica, Dudleya traskiae, Rhododendron chapmanii, Trillium persistens, Sarracenia oreophila, and several others.

In 1986, NRDC surveyed catalogs of 46 nurseries selling North American wildflowers. We found many selling coneflowers,

including 5 nurseries selling propagated specimens of the Tennessee purple coneflower, Echinaceae tennesseensis, an endangered species. Genera containing listed or candidate species, such as goldenrods (Solidago), Trillium, trout lilies (Erythronium), and Penstemon, are widely represented in these catalogs.

Clearly, collecting poses a threat to a wide variety of endangered plant species. The amendment we support would help reduce this threat by enabling federal law enforcement authorities to investigate and prosecute those who remove such plants from their habitat without permission of the landowner or conservation authorities.

Thank you for considering our views. We look forward to working with you to ensure reauthorization of a stronger Endangered Species Act.

Sincerely,

Faith Thompson Campbell

Faith Thompson Campbell, Ph.D.

United States Department of the Interior
FISH AND WILDLIFE SERVICE
75 SPRING STREET S.W.
ATLANTA, GEORGIA 30303

November 20, 1986

Mr. Jesse S. Vogtle
Executive Vice President
Alabama Power Company
600 North 18th Street
Birmingham, Alabama 35203

Dear Mr. Vogtle:

I would like to bring to your attention a recent incident of take involving the green pitcher plant. This particular incident involved a rather large percentage of plants from one of the better colonies located on Alabama Power Company lands in Cherokee County (Colony-Cherokee 9), and it will have significant adverse effects on our ongoing recovery efforts for this endangered species (See Attachment 1).

Situations involving take have always been a problem, being worse at some colony sites than others, and will continue to be difficult to address or control. However, under provisions of the Endangered Species Act, plants are afforded the greatest extent of protection on areas under "Federal jurisdiction." Because of this fact and in an attempt to provide this species with the maximum level of protection possible, we seek your cooperation and assistance by requesting that you consider transferring full jurisdiction of green pitcher plant colony sites not within your proposed development area (Attachment 2, as depicted by Annex 1 of the May 12, 1983, Settlement Agreement) to the U.S. Fish and Wildlife Service.

This could be accomplished through fee title donation, or through any interest in land which would afford the U.S. Fish and Wildlife Service protection and jurisdiction through a donation process. This type action would certainly fall within the purview and spirit of Section 9 of the referenced settlement agreement. If you feel this proposal has possibilities, please contact my office, as we are anxious to begin discussion of the various alternatives available to us.

I would like to commend Alabama Power Company for its outstanding level of cooperation and assistance to our green pitcher plant recovery effort during the past several years, and I am hopeful that this cooperation can be enhanced even further through your favorable response to this letter.

Sincerely yours,

James W. Pulliam, Jr.
Regional Director

Attachments
cc:
John Grogin, Alabama Power Company

Attachment 1

United States Department of the Interior
FISH AND WILDLIFE SERVICE
JACKSON MALL OFFICE CENTER
300 WOODROW WILSON AVENUE, SUITE 316
JACKSON, MISSISSIPPI 39213

August 14, 1986

TO ALL GREEN PITCHER PLANT COLONY LANDOWNERS

It has likely been some time since I have been in touch with many of you concerning the endangered green pitcher plant. Things have been going so smoothly there really hasn't been a need. However, a recent event has developed which concerns me greatly and prompted this letter to you.

While inspecting one of the colonies on 6/26/86, I discovered that many plants had been taken since I last visited the site on 5/19/86. I counted a total of 22 fresh holes scattered throughout the colony. The actual number of plants taken is not known at this time. Obviously, this situation concerns me greatly and will certainly have adverse affects on our recovery efforts.

Attempting to address or correct this problem will be difficult because so many of the colony sites are remote and there is no one to keep an eye on them. However, I did pass the information on to our law enforcement branch and they are expected to initiate an investigation.

Since the very beginning of my involvement in green pitcher plant matters almost seven years ago, I have understood that the degree of our success will be directly related to the extent or level of cooperation we are able to achieve with you, the landowners. Almost without exception, the level of cooperation and assistance from you could not have been better. Because of this we have been able to move forward and initiate many of the recovery actions identified in the recovery plan. In order to continue with this effort and attempt to address the problem identified above, I again seek your cooperation and assistance and request that you not permit or give permission for access to the colony sites to anyone for any reason, other than those involved in

recovery efforts identified below. Anyone else should first be required to obtain clearance from us before allowing them to visit the sites. I know this represents a rather strong position and is not what I would prefer. However, under the circumstances, I feel it is needed at this particular point in our recovery effort. I also realize that many of you do not reside at the colony sites, or, are not in a position to provide assistance, this I understand. However, there are some who can and this will be helpful. The most important thing is that we need to deny or restrict access to the colony sites as much as possible, we need to keep colony site location information confidential, and we need to as much as practical keep a close eye on the colonies and what's taking place.

The following people are cooperating in our recovery effort and should be permitted access to the colony sites. Those not identified or not in the company of those identified below should be denied access until approved through us.

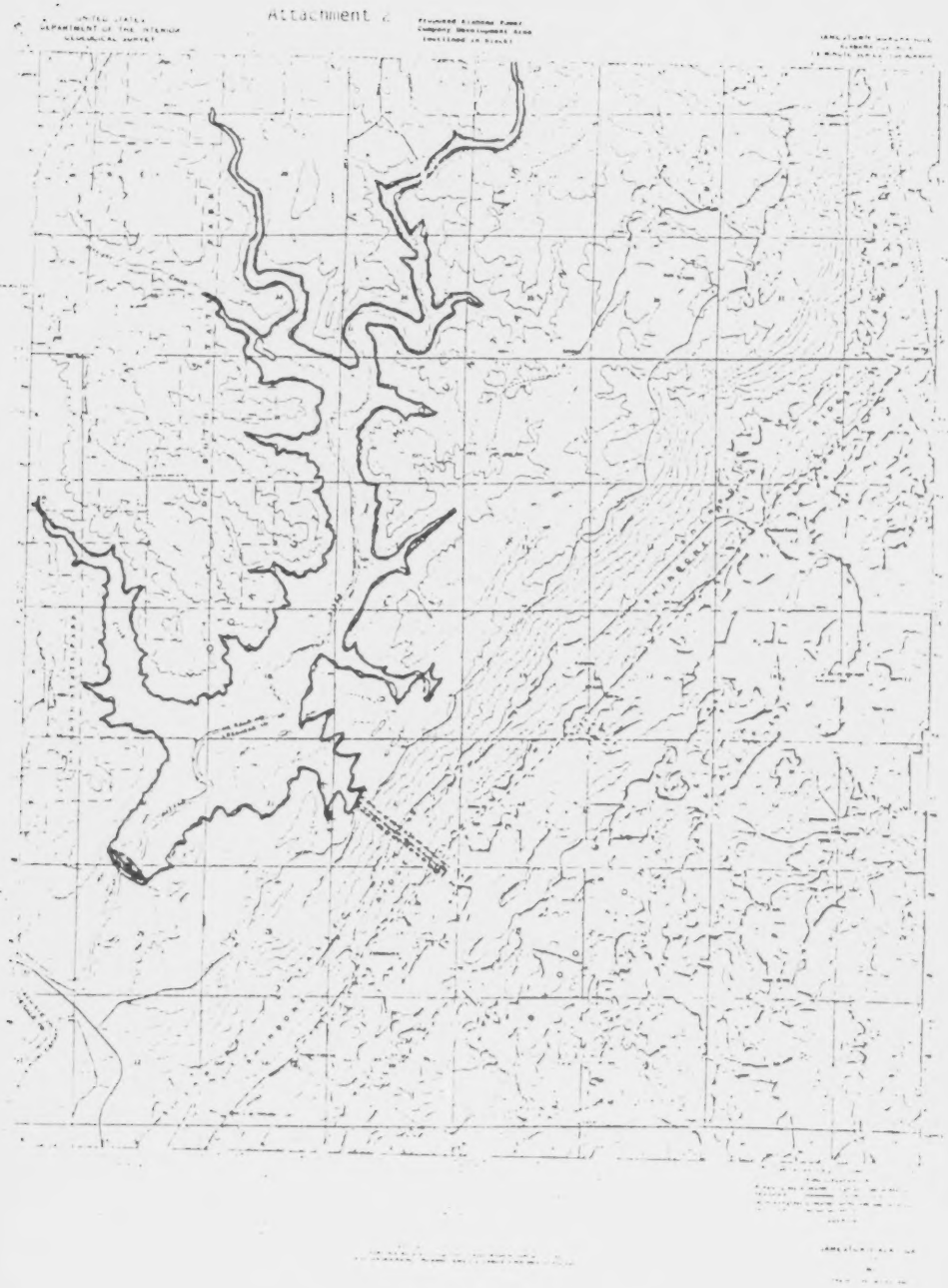
1. Cary Norquist - US Fish and Wildlife Service, Jackson, MS
2. Paul McCabe - Alabama Forestry Commission, Gaylesville, AL
3. Dr. Sidney McDaniel - Mississippi State University
4. Dr. Samuel B. Jones - University of Georgia
5. Dr. George Folkerts - Auburn University
6. Dr. Robert Kral - Vanderbilt University
7. Randy Troup - Guntersville, AL
8. Beth Garrett - Albertville, AL
9. Louise Smith - Birmingham, AL

Again, I want to thank each of you for your cooperation and assistance in our green pitcher plant recovery effort. If you need to talk with me about anything, don't hesitate to call me collect at 601/965-4900.

Sincerely yours,

Dennis B. Jordan
Field Supervisor
Jackson Endangered Species Office

cc:
Cooperators identified above


Attachment 2

The Nature Conservancy

1800 North Kent Street, Arlington, Virginia 22209
(703) 841-5300

STATEMENT OF THE NATURE CONSERVANCY
FRANK D. BOREN PRESIDENT
SUBMITTED TO THE SENATE SUBCOMMITTEE ON ENVIRONMENTAL PROTECTION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
APRIL 7, 1987

No piece of federal legislation has been more significant in the field of conservation than the Endangered Species Act. The preservation of this country's biotic diversity is one of the most important issues facing the country today. As the Baird Professor of Science at Harvard, Edward O. Wilson, has noted, "The worst thing that can happen to the human race is not energy depletion, economic collapse, or conquest by a totalitarian government. The one process that will take millions of years to correct is the loss of species diversity by the destruction of natural habitat. This is the folly our descendants are least likely to forgive us."

The Nature Conservancy is a national, private, non-profit organization with over 300,000 members. Our principal objective is to identify the best and most important examples of America's ecosystem types and rare species habitats, and to provide protection for the most threatened of those natural areas and species. We are the largest private organization engaged in species conservation in the United States today. The Nature Conservancy, acting sometimes independently and sometimes in cooperation with federal, state, and local conservation agencies, has helped preserve more than 2,800,000 acres of natural lands since 1954. Included in this acreage are the habitats of 64 species of animals (244 occurences) and 28 species of plants (61 occurences) that are listed as threatened or endangered on the federal list, and 266 plant species (561 occurences) under review for potential federal listing. We have also protected numerous state-listed species in virtually every state. In recent years, as a result of cutbacks in government spending, The Nature Conservancy has spent more money for acquisition of essential habitat for the preservation of endangered species than has the United States Fish and Wildlife Service.

We strongly endorse S. 675 to reauthorize the Endangered Species Act for 5 years. Our concern, however, is not just that the Endangered Species Act be reauthorized. Our concern is also that Congress allocate the necessary resources so that the Act can truly accomplish its goals.

The tragedy of the Endangered Species Act is not that it is poorly written law. In our opinion the contrary is true. The Endangered Species Act as reauthorized in 1982 is a fundamentally sound piece of legislation that provides the United States Fish and Wildlife Service with the necessary legal authority to do a proper job of preserving endangered species. The potentially fatal flaw is that the Act is seriously underfunded.

100% Recycled Paper

Listing

Identification is the first step in protection. Identification in the Endangered Species Act is found in Section IV, the Listing process. Protections of the Act cannot be afforded a species that is not listed under Section IV. If the Fish and Wildlife Service is not provided with sufficient resources to do a proper listing, they are unable to extend protections to the many species that warrant it.

Since 1973 the list of endangered and threatened species has increased by about 429 species, an average of 39 per year. Currently, however, there exist more than 1,000 additional candidate species for which the US Fish and Wildlife Service has stated that there is sufficient information to warrant proposals to add them to the list. Such proposals cannot be processed, however, because of inadequate resources. If this backlog of candidate species were to be "processed" at a rate equal to the recent historical average, it would take more than 25 years just to extend protection to those species already known to need protection now. This does not even begin to address the literally thousands of other species that are suspected to be in a threatened state. Clearly there is a desperate need for increased resources in the listing process.

The primacy of information in this process is absolute. Without that information, a listing would not be warranted. Without a listing, protection would never occur. Worse yet, with the wrong kind of information, the wrong kind of protection occurs.

The Nature Conservancy has long recognized this primacy of information as the central fact in the preservation of species. We have been working for more than ten years to establish an information base that can guide this process. We call this system a Natural Heritage Inventory Program. Natural Heritage Inventory Programs are permanent computer information systems. These programs compile data on the existence, characteristics, numbers, condition, status, location and distribution of rare or declining species and habitats and other uncommon natural features in a state or region. Since the establishment of the first Heritage program in South Carolina, The Nature Conservancy has helped to launch similar programs in 46 states. The original goal of the Heritage program continues to guide its efforts today. In order to make sound decisions about the allocation of conservation resources, the single most important need is for accurate information about the status of species and ecosystems.

The Heritage programs have demonstrated time after time their ability to provide that information. Some examples are:

- The Washington Heritage program alerted the National Park Service that its plans for a scenic viewpoint would destroy one of five known populations for golden indian paintbrush, a federal candidate plant species. The Park Service decided to modify its plan.

- The Washington Heritage program also located Howellia aquatilis, known in four sites only, in a grazing allotment within a National Wildlife Refuge. The Heritage Program worked with the

Refuge staff to develop a management plan for the area to protect the rare plant. Later the area was added to an existing Research Natural Area and fenced.

- The largest remaining population of an endangered species endemic to North Carolina, Cooley's meadowrue, was located by the North Carolina Heritage program and protected through a registry agreement with North Carolina Power and Light Company and with International Paper Company.

- The Massachusetts Department of Transportation planned to route a highway across one of the few sites of the rare Eupatorium leucolepis var. nova-angliae (white bracted boneset), Category 1 for federal protection. This site supports 60% of the world's population of the species. Heritage program staff meetings with state highway staff resulted in a realignment to minimize damage. All this was done before right-of-way was secured, land was acquired, and the final design was made.

- In Florida, the Seminole Electric Cooperative narrowed selection of sites for a coal-fired electric generating plant to two locations. The preferred location was Alum Bluffs, an area adjacent to the Appalachicola River. The State Department of Environmental Regulation asked the Heritage Program to provide detailed ecological data on the site, which includes the federally listed plant Torreya taxifolia. After reviewing the biological data, the Cooperative chose another locality. When the option on Alum Bluffs expired, the Conservancy acquired the site.

Heritage information frequently shows that a species is sufficiently recovered to be removed from the list or that it wasn't as rare as had been thought in the first place. For example:

- In Wyoming the Heritage Program reduced the number of federally considered species from 19 to 5, finding greatly increased numbers of many species that had been considered rare.

- In Colorado, of 25 Category 2 plant reviews, 14 were recommended for lower status as a result of Heritage Program research.

- The Arizona Heritage Program has suggested that 24 species be removed from the federal candidate list.

- In Ohio, at least 15 species believed extripated in the state have been rediscovered in field studies conducted by the Heritage Program.

This information has resulted in recommendations that certain species be removed from federal and state lists. This obviates the need for the production of a recovery plan, acquisition of critical habitat, etc. Accurate information at the start of the process can save money and a lot of wasted effort.

These examples are not offered to point out deficiencies in the information-gathering abilities of the Fish and Wildlife Service. Quite the contrary. In many cases the Fish and Wildlife Service has contracted with the Heritage programs to obtain the necessary information. What these examples point out is the size of the job of gathering the necessary data on species. And data costs money. The Conservancy believes that the current funding levels for the listing process do not adequately address the need. In fact, there are species that have suffered potentially irreparable harm and have been brought closer to extirpation for lack of funding. These species are literally dying off while they wait for a well-deserved listing.

- The Texas henslow sparrow, for example, has apparently become extinct even as the Fish and Wildlife Service was trying to decide whether it should be listed. The Arizona agave, a desert plant, occurred in a dozen or so different sites as recently as 1980. Today this plant remains at a single site.

- In Texas, a status report on a plant (large-fruited sand verbena) was completed in May 1983 with a recommendation that the plant be added to the federal list. At the time there was only one known population. Since then, a biologist has checked the site and found no plants. While waiting for a listing, the plant has apparently become extinct.

- In Arizona, a status survey completed by the Heritage program in 1979 identified the Tarahumaro frog as a species in need of special attention. At that time, there were fewer than 100 in existence. The species was recommended for listing in 1983, but lack of funding from the Fish and Wildlife Service for sufficient status work deterred the effort. Since that time, the last Tarahumaro frog in Arizona has apparently disappeared.

- Finally, Thalictrum cooleyi (Cooley's meadowrue) -- perhaps North Carolina's most endangered plant -- has been on their waiting list to be federally listed for many years. This species has apparently been declining, though it has always been restricted in distribution due to its correlation with a rarely occuring habitat. It is now restricted to eight sites in North Carolina, which may constitute only two populations, as the sites are very close together in two clusters. Although the plant does not occur on federal land, it needs to be listed.

The Nature Conservancy believes that the current proposed budget for the listing process in the Endangered Species Act ($3.3 million) is woefully inadequate to do the job. As we have pointed out before, it would take nearly twenty-five years from today just to process the listing packages for all of the species known to need protection. Status survey work on plants and animals, with emphasis on the States of Hawaii, California, Florida, Utah, Texas, Oregon and Alabama, is also badly needed and badly underfunded. The Conservancy believes that authorization levels should be established that would allow at least $15 million annually for the listing process, and that a portion of those funds be directed at increasing the number of personnel involved with the listing.

State Grants

Section 6 of the Endangered Species Act provides financial assistance for a key element of successful treatment of endangered species. State grants are an integral part of the data gathering and recovery process. Section 6 grants stimulate interest and build expertise at the state level as well as increase the resources devoted to endangered species work through the state match. The goal of Section 6 is to encourage cooperative agreements between the states and the federal government to increase endangered species work. Both federally listed species and candidates are eligible.

In 1977, an early year in the state grants program, there were 21 cooperative agreements. Section 6 was appropriated $4 million, providing almost $200,000 per agreement.

A comparison of that year and 1987 provides a dramatic example of the desperate situation today. Currently there are 76 cooperative agreements with 46 states, Guam, Puerto Rico, and the Virgin Islands. That is nearly a four fold increase in the number of cooperative agreements. Appropriations for Section 6, however, have not increased an equivalent amount. In fact, Section 6 received $4.3 million in Fiscal Year 1987, essentially the same amount that was appropriated ten years ago when there were only 21 cooperative agreements. The results are obvious. While Section 6 was providing $200,000 per cooperative agreement in 1977, today it can average only $57,000 per agreement, a woefully inadequate sum. We should, at a minimum, require an authorized level of $15 million. The Nature Conservancy strongly supports such a level.

As it is today, five states have cooperative agreements but received no funds in 1986. The small amount of money currently available to each state makes it very difficult to carry out an effective endangered species program at the state level. In requesting Section 6 grants states have reduced their requests and have curtailed their endangered species activities because of their prior knowledge that Section 6 funds would not be available. For example, although the state of Ohio has signed cooperative agreements with the federal Office of Endangered Species, they have eliminated their requests because the time and resources needed to put together requests has not resulted in enough funds to make it worthwhile. In many states endangered species coordinators have been forced to design their requests to undertake only those projects that they know have a chance of being funded.

Funding authorizations of $15 million in Fiscal Year 1988, rising to $25 million in Fiscal Year 1992, are recommended to allow for funding all existing agreements and those yet to be signed as well as additional listed species and increased work on candidates. The states are willing and eager to do more, to spend more federal dollars in conjunction with their own and to make good use of them. The following examples illustrate the kinds of activites the states have already engaged in using Section 6 grants and the kinds of activities that they would put on their priority list were Section 6 money available in significantly higher amounts.

New York. Last year New York sought $71,000 in federal assistance through Section 6. They received a total of $19,500. Though New York has only 2 listed plant species, there is a very important species, sandplain gerardia, which is a catagory 1 waiting to be listed. The package was sent to

the federal government 1 1/2 years ago. There are only five sites in New York. A recovery plan, monitoring, searching for populations and continuing status survey work needs to be done. In plants alone New York could use funds to provide a listing package for the harts tongue fern. They could also use funds for status surveys for four or five critical species as well as the recovery plan for the sandplain gerardia.

Massachusetts. Massachusetts has a very active endangered species program, partially funded through Section 6 and partially funded through the non-game wildlife fund, which is an income tax check-off. This check-off has been raising less each year, dropping from $360,000 to $200,000 in 1986.

Excluding whales and turtles there are six listed vertebrates in Massachusetts, the most special of which is the Plymouth red-bellied turtle which is endemic to Massachusetts. There is one federally listed plant, the small whorled pogonia. Also in residence is the largest population of the piping plover, and another shorebird, the roseate tern, which is a candidate for listing. Management needs for these shorebirds are great because they require the roping off of beaches and predator control. The red-bellied turtle has been a subject of much work by the Massachusetts endangered species program.

Massachusetts has been fairly successful in obtaining Section 6 grants. For example, for the Plymouth red-bellied turtle they received $16,000 for a recovery plan and life history. Reptiles seem to get priority; whereas birds, in particular the bald eagle and peregrine projects which they requested funds for, have not been funded.

In planning requests, Massachusetts endangered species specialists have made sure that they work with the Fish and Wildlife Service, so that they know ahead of time what is likely to be funded. They feel that dramatically increased funds could be legitimately spent in Massachusetts. Particularly, the North Atlantic right whale deserves significantly increased spending. There are only 300 right whales in the Atlantic Ocean. Massachusetts and Georgia have made the right whale the official state marine mammal. The Massachusetts legislature declared a whale awareness day. Already, $50,000 from the state's general fund has been appointed for research on the right whale, with potential for $250,000 more this year. A recovery plan, still unwritten by National Marine Fisheries Service (NMFS), is predicted to be very expensive because it would require highly developed technology, ship-board observation, airborne survey work, and even satellite radio telemetry. However, as much as a million per year could be spent on the right whale.

Priorities in Massachusetts for future work include expanded research on bald eagles, site checking on peregrines, and more management of the Plymouth red-bellied turtle and the short-nosed sturgeon which is found in the Merrimack River. A great deal more study is required for the Atlantic ridleys turtle, and piping plover recovery would mean acquisition of critical habitat. Research on roseate terns at Cape Code and research for other colonies on the coast would be done if funds were available.

Arkansas. Arkansas has received a small portion of those funds which they have requested for Fiscal Year 1986 and Fiscal Year 1987. For example, for plants in 1986 they requested $37,000 and received only $10,000. In 1987 they requested $31,000 and received only $5,000. Their estimate of need for Fiscal Year 1988 is approximately $92,000.

California. After seeking Section 6 funding of $900,000 in Fiscal Year 1986, the State of California received approximately $350,000, an insufficient sum to manage 26 federally listed species, 2 proposed species, 250 catagory 1 species and 400 catagory 2 species. Only about 7 plant species have complete recovery plans; all the rest need recovery plans or survey management plans. Furthermore, at approximately $15,000 per recovery plan, a recovery budget of over $300,000 is necessary. An estimated 200 species are in need of status surveys.

Texas. Texas is one of the few states that does not yet have a signed cooperative agreement. Because signing both plant and animal agreements is imminent, and because the state has invested some of its own resources in endangered species work, planning for Section 6 activities has taken place. The Texas Heritage program has estimated that they could put to good use some $216,000 for plants and $360,000 for animals. Their first request of approximately $32,500 for 10 projects reflects the scaled down expectations of states not yet on the funding list at all.

These examples demonstrate that Section 6 should be authorized at a significantly higher level; we recommend $15 million. We realize the difficulty of actually raising appropriation levels, and for this reason we mention favorably the idea of establishing a secure, predictable funding source, earmarked exclusively for state grants. The success of the Pittman-Robertson, Dingell-Johnson and Wallop-Breaux programs has lead some to suggest similar revenue raising schemes for Section 6, such as duties on certain imported products, penalties recovered under various environmental laws, or excise taxes on certain products. We support examination and persual of such funding solutions.

United States Forest Service and the Bureau of Land Management

There are currently 129 listed species on National Forest Service land, 12 proposed for listing, 81 category 1 species and 539 category 2 species. On Bureau of Land Management lands there are 127 listed species and 790 candidate species. Under the Endangered Species Act, these agencies are under an obligation to ensure protection of listed species. However, both agencies suffer from a lack of resources to sufficiently carry out this responsibility.

Even though 79 Recovery plans have been approved for species on Forest Service lands, only high priority plans have been fully implemented. Examples would be the grizzly bear, Kirkland's warbler, Puerto Rican parrot, bald eagle and the woodland caribou. Overall, approximately 50% of the recovery plans are partially implemented. While BLM has written 73 recovery plans, implementation has begun on only 56, and none of them are fully implemented.

The problem, again, is resources. The Forest Service's Threatened and Endangered Species allocation is only $3.6 million and BLM's budget for endangered species work is approximately $4 million. The Nature Conservancy recommends that authorization levels be sufficient to ensure that at least $5 million be available to each agency annually to carry out its obligations under the Act.

Further, we commend the Forest Service and the Bureau of Land Management for their designation of Research Natural Areas (RNA's) and Areas of Critical Environmental Concern (ACEC's). The Forest Service has established more than 150 RNA's and the Bureau of Land Management currently manages 245 ACEC's, totaling over 3,000,000 acres. Making use of these designations in the planning process has proved to be a valuable tool in managing for endangered species protection. We urge the continued use of the RNA and ACEC designations. Moreover, we urge more extensive use of these designations when the protection of critical sites merits such protection.

Other Resource Needs

The other components of the Endangered Species Act -- recovery, international work, law enforcement -- are all integral parts of the whole Act. Each component must function at its maximum capacity to truly protect endangered species. The Nature Conservancy's expertise lies primarily in the data-gathering aspect of the Act, and we have addressed that specifically. Many other concerned parties will present testimony to this Committee on the compelling need for more resources throughout all the functions of the Act. The Nature Conservancy heartily endorses an authorization level that would allow appropriations of at least $65 million for all functions of the Act, reiterating our specific recommendatons that $15 million be devoted to listing, $15 million to Section 6 and $5 million each to the Forest Service and the Bureau of Land Management.

Proposed Amendments

The Nature Conservancy supports an amendment addressing the backlog of species that have formally been identified by the Fish and Wildlife Service as candidates for listing but which, because of the limited resources available to the Act, do not receive much needed protection. The Nature Conservancy's Heritage Programs have provided several examples of how such species decline, some to the point of extinction, while waiting for this protection. In order to alleviate this problem, the Conservancy supports an amendment to treat candidate species as "proposed" species under Section 7(a)(4) of the Act. This would require federal agencies to confer with the Secretary about any action on their part that may adversely affect the species. This process is less rigid than the Section 7 consultation process, but will provide a small measure of needed protection for these candidate species.

Seabeach amaranth (Amaranthus pumilus) is an example of a plant that needs the protection of the Endangered Species Act. Only 20 populations of this plant exist today--all in North and South Carolina. It has been extripated from more than half its historic range: it can no longer be found on the coast of Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland and Virginia. Many of the Carolina sites are on public land, but this does not translate to adequate protection. In addition to development of barrier islands, serious threats to seabeach amaranth come from indiscriminate ORV use on beaches. Management policy regarding ORV use on the public beach sites is desperately needed. The species is still ranked Category 2 (U.S. Fish and Wildlife Service), and thus it would benefit now from the "candidate amendment."

Howellia aquatilis is a species for which there is very good evidence showing a decline in range and total abundance. It is an aquatic annual which grows in ponds, glacial potholes, and oxbows in areas which are hydrologically very complex. The species is currently in Category 2; if such taxa were given more protection, Howellia aquatilis would directly benefit. In the Swan Valley in western Montana, two areas where the plant occurs, are directly threatened by logging of surrounding forests on U.S. Forest Service lands. In addition, development which is impacting the wetlands in one major area of occurrence is being carried out under permit from the U.S. Army Corp of Engineers. The "Category 2" status of this plant prevents any strong recommendations to these agencies. Often, we can only hope that they will consider such a species in their management plans "out of the goodness of their hearts." A species which is as threatened as Howellia aquatilis needs more protection than that.

The Nature Conservancy also supports an amendment to correct an inequity in the Act. Currently, plants do not receive the same treatment and protection on non-federal lands that animals do. Individuals can destroy, uproot or take plants from lands in private or state ownership. We support an amendment that would change Section 9(a)(2) of the Act to prohibit the collection, vandalism, or taking of protected plant species on private lands.

For example, smooth coneflower (Ecninacea laevigata) is a southeastern endemic that would greatly benefit from both the listing (less than 20 populations have been found over its entire range) and an amendment prohibiting collection, etc., on non-federal lands. All species of the genus Echinacea are collected and traded/sold in the horticultural market.

Lastly, TNC supports cooperative efforts to resolve conflicts between the protection of endangered species and the development of water resources, like the recovery program for endangered fish in the Upper Colorado River Basin described in the testimony of the Colorado Congress. We join the Water Congress in supporting the continued funding of development of the Upper Colorado River Basin recovery program, in supporting the appropriation of $10 million for the acquisition of water rights to protect instream habitat under the program, in seeking a report to Congress no later than March 1, 1988 on the progress under the program, and in asking that the program be implemented consistent with state water rights systems and interstate compact entitlements. Our support for such cooperation, however, should not be taken as an endorsement of the 2 year reauthorization or of the other proposals advocated by the Water Congress. In particular, we strongly endorse a 5 year reauthorization, and we believe that such a reauthorization is the appropriate framework for cooperative efforts like the Upper Colorado River Basin recovery program. We also believe that such cooperation can be achieved without amending the Endangered Species Act.

THE WILDLIFE SOCIETY
5410 Grosvenor Lane • Bethesda, MD 20814 • Tel. (301) 897-9770

11 April 1987

The Honorable George J. Mitchell
Chairman, Subcommittee of Environmental Protection
SD-410 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Mitchell,

The Wildlife Society appreciates the opportunity to present our position supporting the reauthorization of the Endangered Species Act of 1973. The Wildlife Society is the international association of wildlife professionals working at all levels in the public and private sectors to promote the wise stewardship of our natural resources. Moreover, many of our members work directly with endangered species and are professionally concerned about the tremendous need for reauthorizing the Endangered Species Act. Properly funded, the Endangered Species Act in its present form can continue to be an important and effective tool that permits sound development to proceed and minimizes loss of our wildlife resources. The Act provides a functional mechanism by which people can work together to protect and return endangered species to viable population levels. Therefore, The Wildlife Society urges the reauthorization of the Endangered Species Act of 1973 without amendments, and offers the following comments on several pertinent reauthorization issues.

The act is well written and comprehensive, but its effectiveness always has been hindered by inadequate funding. In light of the current federal deficit, The Wildlife Society can accept the funding ceilings proposed in S 675. However, further lowering of the appropriations ceiling would be unacceptable for such an important program that is currently underfunded.

The initial step in protecting a species is recognition of its threatened or endangered status. However, the listing program has been behind schedule since its inception, and instead of catching up, the backlog has grown. To process candidate species in a timely and efficient manner, Fish and Wildlife Service staff have been forced to consider only top priority candidates and even then may require time extensions before a species actually is listed. While the listing staff may be granted time extensions from the Secretary, some species may face greater jeopardy. The Texas Henslows's sparrow was extinct by the time

it was listed. The cost of inadequate funding is not just limited to loss of species, but extends to increasing the recovery costs for those taxa that are listed. By delaying recovery plans, we may forego existing opportunities to mitigate declines and be forced to proceed with expensive, last resort efforts to attempt recovery with reduced probabilities of success. By increasing staff and funding levels, species' status can be determined earlier so recovery plans can be initiated promptly before undue population declines occur.

Through interagency consultations, the Endangered Species Act provides adequate flexibility to protect endangered species without inappropriately halting economic developments. As former Fish and Wildlife Service Director Jantzen testified to this committee during the last reauthorization attempt, federal agencies are becoming accustomed to section 7 procedures, with informal consultations increasing 40% since 1979. While formal consultations decreased over 70% during the same period, they now are increasing slowly as new species are listed and the number of new development projects grow. According to the FY 1988 U.S. Fish and Wildlife Service budget, there were 420 formal consultations conducted in 1986 with 460 expected in 1987 and 510 expected to occur in 1988. The trend in the current administration budget, however, is the opposite; less and less funds for the consultation process. The smooth operation of the endangered species program is contingent on the ability of federal agencies to resolve conflicts through consultation. Decreased funding when increased resources are needed only will lead to hastily made decisions and more, rather than fewer, conflicts. It is in everyone's interest to support a well funded consultation process capable of designing solutions that obviate the costly and time consuming legal battles exemplified by the Tellico Dam controversy.

Since the passage of the Endangered Species Act, Congress has charged the Fish and Wildlife Service with the responsibility of managing the endangered species program and sharing the cost of needed cooperative agreements. It is particularly important to recognize that financial assistance to the states is a federal responsibility and that it is essential to the success of recovery programs. States are not able to bear the full cost of well designed endangered species programs. As Fish and Wildlife Service Director Dunkle stated, "...the complex and often difficult task of recovering endangered species is one that is too large for any single agency." It is imperative that the Federal government take a more active role in cooperative recovery programs if listed species are to return to viable population levels.

The Wildlife Society believes passage of S 675 with its proposed appropriation levels will help increase the effectiveness of the Endangered Species program.

There are concerns by some who feel that the Act in its present form unduly impedes water development and interferes with state-granted water rights. However, The Wildlife Society can not support any amendment altering the Act. Already the Act states that Federal agencies shall cooperate to resolve water resource issues and provides a mechanism specifically developed by Congress to resolve conflicts fairly through section 7. The Wildlife Society believes the Endangered Species Act has sufficient flexibility to prevent undue impediments to development. The Act should not be amended to accommodate individual projects whose proponents are unable to accept a negative ruling. The Wildlife Society believes strongly that section 7 conflicts should be resolved within the existing framework of the Act.

The extent to which threatened and endangered species may be taken, such as the grizzly bear and wolf, is another topic of discussion. The Eighth Circuit Court of Appeals upheld a lower court ruling that a sport trapping season for a Minnesota wolf population was not permissible at this time. The Wildlife Society believes strongly that professional biologists charged with the recovery of threatened and endangered species should have a broad range of management options available to adequately handle problems inherent with predatory species. Amendments to address regulated taking of threatened and endangered species are needed but the Society will not impede the timely reauthorization of S 675 by requesting such amendments at this time.

In conclusion, the Endangered Species Act has been successful using limited resources to promote the conservation of endangered and threatened species. The Act has been confronted by several challenges since its original authorization and has continued to be an extremely important piece of legislation. It is essential that the Endangered Species Act be reauthorized and funded to provide protection and recovery efforts for threatened and endangered species.

Thank you for considering the views of The Wildlife Society regarding the Endangered Species Act. Please include this statement in the official hearing record.

Sincerely,

Harry E. Hodgdon

Harry E. Hodgdon
Executive Director

jab

II

100TH CONGRESS
1ST SESSION

S. 675

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1987

Mr. MITCHELL (for himself, Mr. CHAFEE, Mr. MOYNIHAN, Mr. STAFFORD, Mr. LAUTENBERG, Mr. DURENBERGER, and Mr. GRAHAM) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To authorize appropriations to carry out the Endangered Species Act of 1973 during fiscal years 1988, 1989, 1990, 1991, and 1992.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 15 of the Endangered Species Act of 1973 (16 U.S.C. 1542) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 15. (a) IN GENERAL.—Except as provided in subsections (b), (c), and (d), there are authorized to be appropriated—

"(1) not to exceed $35,000,000 for fiscal year 1988, $36,500,000 for fiscal year 1989, $38,000,000 for fiscal year 1990, $39,500,000 for fiscal year 1991, and $41,500,000 for fiscal year 1992 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this Act;

"(2) not to exceed $5,750,000 for fiscal year 1988, $6,250,000 for each of fiscal years 1989 and 1990, and $6,750,000 for each of fiscal years 1991 and 1992 to enable the Department of Commerce to carry out such functions and responsibilities as it may have been given under this Act; and

"(3) not to exceed $2,200,000 for fiscal year 1988, $2,400,000 for each of fiscal years 1989 and 1990, and $2,600,000 for each of fiscal years 1991 and 1992 to enable the Department of Agriculture to carry out its functions and responsibilities with respect to the enforcement of this Act and the Convention which pertain to the importation or exportation of plants.

"(b) COOPERATION WITH STATES.—For the purposes of section 6, there are authorized to be appropriated not to exceed $12,000,000 for fiscal year 1988, $13,000,000 for

each of fiscal years 1989 and 1990, and $14,000,000 for each of fiscal years 1991 and 1992.

"(c) EXEMPTIONS FROM ACT.—There are authorized to be appropriated to the Secretary to assist him and the Endangered Species Committee in carrying out their functions under subsections 7(e), (g), and (h) of section 7 not to exceed $600,000 for each of fiscal years 1988, 1989, 1990, 1991, and 1992.

"(d) CONVENTION IMPLEMENTATION.—There are authorized to be appropriated to the Department of the Interior for purposes of carrying out section 8A(e) not to exceed $400,000 for each of fiscal years 1988, 1989, and 1990, and $500,000 for each of fiscal years 1991 and 1992, and such sums shall remain available until expended.".

○